IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,

*Appellants,*

—v.—

S. B. STREET, *et al.*,

*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

## OPPOSITION BY INDIVIDUAL APPELLEES, S. B. STREET, *ET AL.*, TO MOTION OF KENNETH L. HOSTETLER, *ET AL.*, FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

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January 30, 1961

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Individual appellees object for the following reasons to the motion of Kenneth L. Hostetler, *et al.*, for leave to file brief as *amici curiae* on the merits of this case.

Movants' motion is not timely filed. The record in this case has been before this Court for more than a year. Each side has filed at least two briefs, and two full arguments have been had. The case has been fully briefed, and additional documents will only confuse, not clarify, the issues.

Movants have not shown any interest in this case which has not been, and is not being, adequately represented by

the parties hereto. There is no allegation
interest on the part of movants which requi
resentation. The fact that movants are c
other litigation, which might be benefited
issue there were determined here, gives th
interest in this case.

For the foregoing reasons, the individual
withheld consent to the filing of a brief a
Kenneth L. Hostetler, *et al.*, and respectful
the Court should deny their motion for lea
brief and for expedited distribution thereof.

Respectfully submitted,

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Atlanta, Georgia
*Of Counsel*

January 30, 1961

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*dividual Appellees*
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tlanta 3, Georgia

ICHARDSON

# SUPREME COURT OF THE UNITED

No. 4.—October Term, 1960.

International Association of Machinists, et al., Appellants,
*v.*
S. B. Street, et al.

On Appeal From
preme Court of

[June 19, 1961.]

Mr. Justice Brennan delivered the opini
Court.

A group of labor organizations, appellants her
carriers comprising the Southern Railway Syste
into a union-shop agreement pursuant to the au
§ 2, Eleventh of the Railway Labor Act.[1] T

[1] 64 Stat. 1238, 45 U. S. C. § 152, Eleventh. The sectio
"Eleventh. Notwithstanding any other provisions of
or of any other statute or law of the United States,
thereof, or of any State, any carrier or carriers as de
chapter and a labor organization or labor organizations
nated and authorized to represent employees in accorda
requirements of this chapter shall be permitted—
"(a) to make agreements, requiring, as a condition
employment, that within sixty days following the begin
employment, or the effective date of such agreements,
the later, all employees shall become members of the lab
tion representing their craft or class: *Provided*, That no
ment shall require such condition of employment with
employees to whom membership is not available upo
terms and conditions as are generally applicable to any ot
or with respect to employees to whom membership wa
terminated for any reason other than the failure of th
to tender the periodic dues, initiation fees, and assess
including fines and penalties) uniformly required as a
acquiring or retaining membership.
"(b) to make agreements providing for the deducti
carrier or carriers from the wages of its or their emp

ment requires each of the appellees,
carriers, as a condition of continued e
the appellant union representing his

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craft or class and payment to the labor org
the craft or class of such employees, of any p
fees, and assessments (not including fines and
required as a condition of acquiring or r
*Provided*, That no such agreement shall be ef
any individual employee until he shall have f
with a written assignment to the labor organiz
ship dues, initiation fees, and assessments, wh
in writing after the expiration of one year or
date of the applicable collective agreement, wh

"(c) The requirement of membership in a la
agreement made pursuant to subparagraph
shall be satisfied, as to both a present or futur
train, yard, or hostling service, that is, an em
of the services or capacities covered in the
graph (h) of section 153 of this title, defining
of the First Division of the National Railroad
said employee shall hold or acquire membersh
labor organizations, national in scope, organiz
this chapter and admitting to membership em
class in any of said services; and no agreement
paragraph (b) of this paragraph shall provid
his wages for periodic dues, initiation fees, o
to any labor organization other than that in
bership: *Provided, however*, That as to an em
services on a particular carrier at the effec
agreement on a carrier, who is not a member
organizations, national in scope, organized in
chapter and admitting to membership employ
in any of said services, such employee, as a
his employment, may be required to become a
ization representing the craft in which he is em
date of the first agreement applicable to him:
nothing herein or in any such agreement or ag
an employee from changing membership fro
another organization admitting to membershi
or class in any of said services.

"(d) Any provisions in paragraphs Fourth
in conflict herewith are to the extent of such

s, employees of the
employment, to pay
is particular class or

organization representing
y periodic dues, initiation
and penalties) uniformly
retaining membership:
effective with respect to
e furnished the employer
anization of such member-
which shall be revocable
or upon the termination
whichever occurs sooner.
a labor organization in an
ph (a) of this paragraph
uture employee in engine,
employee engaged in any
he First Division of para-
ing the jurisdictional scope
road Adjustment Board, if
bership in any one of the
anized in accordance with
p employees of a craft or
ment made pursuant to sub-
rovide for deductions from
es, or assessments payable
t in which he holds mem-
n employee in any of said
effective date of any such
ber of any one of the labor
d in accordance with this
nployees of a craft or class
s a condition of continuing
me a member of the organ-
is employed on the effective
im: *Provided, further*, That
or agreements shall prevent
p from one organization to
ership employees of a craft

urth and Fifth of this section
such conflict amended."



craft the periodic dues, initiation fees and
uniformly required as a condition of acquir
ing union membership. The appellees,
themselves and of employees similarly situ
this action in the Superior Court of Bibb Cou
alleging that the money each was thus com
to hold his job was in substantial part used
campaigns of candidates for federal and
whom he opposed, and to promote the pr
political and economic doctrines, concepts a
with which he disagreed. The Superior Cou
the allegations were fully proved [2] and ent

[2] The pertinent findings of the trial court are:

"(5) The funds so exacted from plaintiffs and the
resent by the labor union defendants have been, and
in substantial amounts by the latter to support th
paigns of candidates for the offices of President and
of the United States, and for the Senate and House of
of the United States, opposed by plaintiffs and the
resent, and also to support by direct and indirect fin
tions and expenditures the political campaigns of can
and local public offices, opposed by plaintiffs and the
sent. The said funds are so used both by each of
defendants separately and by all of the labor union
lectively and in concert among themselves and with
tions not parties to this action through associations,
mittees formed for that purpose.

"(6) Those funds have been and are being use
amounts to propagate political and economic doctrin
ideologies and to promote legislative programs oppo
and the class they represent. Those funds have al
being used in substantial amounts to impose upon p
class they represent, as well as upon the general pu
to those doctrines, concepts, ideologies and programs

"(7) The exaction of moneys from plaintiffs and
represent for the purposes and activities described a
sonably necessary to collective bargaining or to maint
ence and position of said union defendants as effe
agents or to inform the employees whom said defen
of developments of mutual interest. [*Note 2 con*

ment and decree enjoining the enforce
shop agreement on the ground that
lates the Federal Constitution to the
mits such use by the appellants of the
employees.[3] The Supreme Court of Ge
Ga. —.[4] On appeal to this Court
§ 1257 (1) we noted probable jurisdict

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"(8) The exaction of said money from plain
represent, in the fashion set forth above by th
ants, is pursuant to the union shop agreeme
with the terms and conditions of those agreem

[3] The trial judge concluded:

"Said exaction and use of money, said unio
Section 2 (eleventh) of the Railway Labor Act
violate the United States Constitution whic
Ninth and Tenth Amendments thereto guarant
tection from such unwarranted invasion of th
erty rights, (including freedom of association
freedom of speech, freedom of press, freedom t
ical freedom and rights) under the cloak of fed

The judgment and decree provided that the
riers "be and they hereby are perpetually en
the said union shop agreements . . . and f
tioners, or any member of the class they rep
become or remain members of, or pay period
ments to, any of the labor union defendants, p
said defendants may at any time petition the
injunction upon a showing that they no long
improper and unlawful activities described a
also entered in favor of three of the named ap
of periodic dues, initiation fees and assessme

[4] The Supreme Court of Georgia viewed the
presented for its decision as follows:

"The fundamental constitutional question
between the employers of the plaintiffs and
which compels these plaintiffs, if they continu
ployers, to join the unions of their respective
fees and assessments to the unions, where a p
used to support political and economic progra
public office, which the plaintiffs not only do

cement of the union-
t § 2, Eleventh vio-
e extent that it per-
e funds exacted from
Georgia affirmed,—
t under 28 U. S. C.
iction, 361 U. S. 807.

aintiffs and the class they
y the labor union defend-
ments and in accordance
eements.

nion shop agreements and
Act and their enforcement
hich in the First, Fifth,
rantees to individuals pro-
f their personal and prop-
tion, freedom of thought,
m to work and their polit-
federal authority."
the appellants and the car-
y enjoined from enforcing
d from discharging peti-
represent, for refusing to
eriodic dues, fees or assess-
ts, provided, however, that
the court to dissolve said
longer are engaging in the
ed above." Judgment was
d appellees for the amounts
sments paid by them.
l the constitutional question

tion is: Does the contract
and the union defendants,
ntinue to work for the em-
ective crafts; and pay dues,
e a part of the same will be
rograms and candidates for
ly do not approve but op-



## I.

### The Hanson Decision.

We held in *Railway Employees' Dept.* v. *Ha*
U. S. 225, that enactment of the provision of § 2,
authorizing union-shop agreements between
railroads and unions of their employees was a v
cise by Congress of its powers under the Comme
and did not violate the First Amendment or the
ess Clause of the Fifth Amendment. It is ar
our disposition of the First Amendment claims i
disposes of appellees' constitutional claims in
adversely to their contentions. We disagree. A
from its history, that case decided only that § 2,
in authorizing collective agreements conditio
ployees' continued employment on payment
dues, initiation fees and assessments, did n
face impinge upon pr. ected rights of associat
Nebraska Supreme Court in *Hanson*, upho
employees' contention that the union shop coul
stitutionally be enforced against them, stated
union shop "improperly burdens their right to
infringes upon their freedoms. This is particu
as to the latter because it is apparent that som
labor organizations advocate political ideas, supp
ical candidates, and advance national economi
which may or may not be of an employee's cho
Neb. 669, 697. That statement was made in
text of the argument that compelling an indi
become a member of an organization with politi
is an infringement of the constitutional fr
association, whatever may be the constitutio

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pose, violate their rights of freedom of speech and depr
their property without due process of law under the Fir
Amendments to the Federal Constitution?" — Ga., at

compulsory financial support of group activities outside the political process. The Nebraska court's reference to the support of political ideas, candidates, and economic concepts "which may or may not be of an employee's choice" indicates that it was considering at most the question of compelled membership in an organization with political facets. In their brief in this Court the appellees in *Hanson* argued that First Amendment rights would be infringed by the enforcement of an agreement which would enable compulsorily collected funds to be used for political purposes. But there was nothing concrete in the record to show the extent to which the unions were actually spending money for political purposes and what these purposes were, nothing to show the extent to which union funds collected from members were being used to meet the costs of political activity and the mechanism by which this was done, and nothing to show that the employees there involved opposed the use of their money for any particular political objective.[5] In contrast, the present record contains detailed information on all these points, and specific findings were made in the courts below as to all of them. When it is recalled that the action in *Hanson* was brought before the union-shop agreement became effective and that the appellees never

[5] The record contained one union constitution with a statement of political objectives and various other union constitutions authorizing political education activity, lobbying before legislative bodies, and publication of union views. There was an indication that *Labor* was furnished to members of some unions. There was also material taken from the hearings on § 2, Eleventh which included statements of management opponents of the Act that union dues were used for political activities and employees should not be forced to join unions if they did not like the purposes for which their funds would be spent. And there were statements by Rep. Hoffman of Michigan during the debate on the bill, warning union leaders not to levy "political assessments" and use the Act to force their members to meet those assessments.

thereafter showed that the unions were actually engaged in furthering political causes with which they disagreed and that their money would be used to support such activities, it becomes obvious that this Court passed merely on the constitutional validity of § 2, Eleventh of the Railway Labor Act on its face, and not as applied to infringe the particularized constitutional rights of any individual. On such a record, the Court could not have done more, consistently with the restraints that govern us in the adjudication of constitutional questions and warn against their premature decision. We therefore reserved decision of the constitutional questions which the appellees present in this case. We said: "It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record . . . if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. For we pass narrowly on § 2, Eleventh of the Railway Labor Act. 'We only hold that the requirements for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments." *Id.*, p. 238. See also p. 242 (concurring opinion). Thus all that was held in *Hanson* was that § 2, Eleventh was constitutional in its bare authorization of union-shop contracts requiring workers to give "financial support" to unions legally authorized to act as their collective bargaining agents. We sustained this requirement—and only this requirement—embodied in the statutory authorization of agreements under which "all employees shall become members of the labor organization representing their craft or class." We clearly passed neither upon

forced association in any other aspect nor upon the issue of the use of exacted money for political causes which were opposed by the employees.

The record in this case is adequate squarely to present constitutional questions reserved in *Hanson*. These are questions of the utmost gravity. However, the restraints against unnecessary constitutional decision counsel against their determination unless we must conclude that Congress, in authorizing a union shop under § 2, Eleventh, also meant that the labor organization receiving an employee's money should be free, despite that employee's objection, to spend his money for political causes which he opposes. Federal statutes are to be so construed as to avoid serious doubt of their constitutionality. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell* v. *Benson*, 285 U. S. 22, 62. Each named appellee in this action has made known to the union representing his craft or class his dissent from the use of his money for political causes which he opposes. We have therefore examined the legislative history of § 2, Eleventh in the context of the development of unionism in the railroad industry under the regulatory scheme created by the Railway Labor Act to determine whether a construction is "fairly possible" which denies the authority to a union, over the employee's objection, to spend his money for political causes which he opposes. We conclude that such a construction is not only "fairly possible" but entirely reasonable, and we therefore find it unnecessary to decide the correctness of the constitutional determinations made by the Georgia courts.

## II.

### The Rail Unions and Union Security.

The history of union security in the railway industry is marked *first*, by a strong and long-standing tradition of voluntary unionism on the part of the standard rail unions;[6] *second*, by the declaration in 1934 of a congressional policy of complete freedom of choice of employees to join or not to join a union;[7] *third*, by the modification of the firm legislative policy against compulsion, but only as a specific response to the recognition of the expenses and burdens incurred by the unions in the administration of the complex scheme of the Railway Labor Act.

When the question of union security in the rail industry was first given detailed consideration by Congress in 1934 only one of the standard unions had security pro-

[6] "[T]hese railroad labor organizations in the past have refrained from advocating the union shop agreement, or any other type of union security. It has always been our philosophy that the strongest and most militant type of labor organization was the one whose members were carefully selected and who joined conviction and a desire to assist their fellows in promoting objects of labor unionism . . . ." Statement of Charles J. MacGowan, vice president of the International Brotherhood of Boilermakers, Transcript of Proceedings, Presidential Board, appointed Feb. 20, 1943, p. 5358. See also Transcript of Proceedings, Presidential Emergency Board No. 98, appointed pursuant to Exec. Order No. 10306, Nov. 15, 1951, pp. 835–845, Carriers' Exhibit W-28. For an analysis of the reasons for the long-time absence of pressure for union security agreements in the railway industry, see Toner, The Closed Shop, pp. 93–114.

[7] The principle of freedom of choice had been incorporated in two earlier pieces of legislation governing railroads. The Bankruptcy Act of March 3, 1933, 47 Stat. 1481, §§ 77 (p), (q), provided that no judge, trustee, or receiver of a carrier should interfere with employee organization, influence or coerce employees to join a company union, or require employees to join or refrain from joining a labor organization. The Emergency Railroad Transportation Act of June 16, 1933, 48 Stat. 214, § 7 (e), required all carriers to abide

visions in any of its contracts. The Brotherhoo
Railroad Trainmen maintained a number of so-ca
"percentage" contracts, requiring that in certain cla
of employees represented by the Brotherhood, a speci
percentage of employees had to belong to the un
These contracts applied only to yard conductors, y
brakemen and switchmen, and covered no more t
10,000 workers, about 1% of all rail employees. See
ter from Joseph B. Eastman, Federal Coordinato
Transportation, to Chairman of the House Commi
on Interstate and Foreign Commerce, June 7, 1934, H
Rep. No. 1944, 73d Cong., 2d Sess., pp. 14–16; testim
of James A. Farquharson, legislative representativ
the Brotherhood of Railroad Trainmen, Hearings
H. R. 7650, House Committee on Interstate and For
Commerce, 73d Cong., 2d Sess., pp. 94–105.

During congressional consideration of the 1934 leg
tion, the rail unions attempted to persuade Congress
to preclude them from negotiating security arrangeme
By amendments to the original proposal, they sough
assure that the provision which became § 2, F
should prevent the carriers from conditioning emp
ment on membership in a company union but sh
exempt the standard unions from its prohibitions.
Trainmen, the only union which stood to lose e
ing contracts if the section was not limited to comp
unions, especially urged such a limitation. See st
ment of A. F. Whitney, president, S. Rep. No. 1065,
Cong., 2d Sess., pt. 2, p. 2; see also 78 Cong. Rec. 12
12376.

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by these provisions of the Bankruptcy Act. The latter provisio
temporary, with a maximum duration of two years. See testi
of Joseph B. Eastman, Federal Coordinator of Transportation, H
Hearings on H. R. 7650, 73d Cong., 2d Sess., pp. 22–23, and his o
interpretation of this legislation, 7 Interstate Commerce Acts
1934 Supp., pp. 5972–5973.

The unions succeeded in having the House incorporate such a limitation in the bill it passed. See H. R. Rep. No. 1944, 73d Cong., 2d Sess. 2, 6; 78 Cong. Rec. 11710–11720. But the Senate did not acquiesce. Eastman, a firm believer in complete freedom of employees in their choice of representatives, strongly opposed the limitation. He characterized it as "vicious, because it strikes at the principle of freedom of choice which the bill is designed to protect. The prohibited practices acquire no virtue by being confined to so-called 'standard unions.' . . . Within recent years, the practice of tying up men's jobs with labor-union membership has crept into the railroad industry which theretofore was singularly clean in this respect. The practice has been largely in connection with company unions but not entirely. If genuine freedom of choice is to be the basis of labor relations under the Railway Labor Act, as it should be, then the yellow-dog contract, and its corollary, the closed shop, and the so-called 'percentage contract' have no place in the picture." Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess., p. 157.[8] Eastman's views prevailed in the Senate, and the House concurred

[8] Eastman further emphasized that only the Trainmen were immediately affected by the broader prohibition he supported. "I am confident that the only real support for the proposed amendments is from a single organization. None of the other standard organizations has anything to gain from such changes in the bill." Eastman letter, *supra*, p. 15. For other expressions of Eastman's views see House Hearings, *supra*, pp. 28–29; Hearings on H. R. 9861, House Rules Committee, 73d Cong., 2d Sess., pp. 22–24. That other rail unions were still committed at this time to the principle of voluntarism, despite their support of the Trainmen's position, is indicated by the statement of George H. Harrison, representing the Railway Labor Executives' Association: "Now, I hope the committee will not get the thought from these statements that the railroad labor unions that I speak for want to force these men into our unions, because that is not our purpose; . . . ." House Hearings on H. R. 7650, *supra*, p. 86.

in a final version of § 2, Fifth, providing that "[ rier . . . shall require any person seeking emp to sign any contract or agreement promising to not to join a labor organization." See 78 Co 12369–12376, 12382–12388, 12389–12398, 1240 12549–12555.

During World War II, the nonoperating unio an unsuccessful attempt to obtain union securi dental to an effort to secure a wage increase. F the failure of negotiations and mediation, a Pre Emergency Board was appointed. Two princi sons were advanced by the unions. They ur in view of their pledge not to strike for the and their responsibilities to assure uninterrupte tion of the railroads, they were justified in se maintain their positions by union security arran They also maintained that since they secured through collective bargaining for all employees t resented, it was fair that the costs of their opera shared by all workers. The Board recommend drawal of the request, concluding that the un was plainly forbidden by the Railway Labor Act in any event the unions had failed to show its or utility. Presidential Emergency Board, a Feb. 20, 1943, Report of May 24, 1943; Supp Report, May 29, 1943. The Report said: Board is convinced that the essential element union shop as defined in the employees' req prohibited by section 2 of the Railway La The intent of Congress in this respect is m dent, with unusual clarity." Supplemental Repo p. 29.[9] On the merits of the issue, the Board

[9] The Board's view as to the illegality of a union shop ported by an opinion of the Attorney General, 40 Op. Atty. 59, p. 254 (Dec. 29, 1942).

rejected the claim that union security was necessary
protect the bargaining position of the unions: "[T
unions are not suffering from a falling off in memb
On the contrary, . . . membership has been growing
at the present time appears to be the largest in railr
history, with less than 10 percent nonmembership am
the employees here represented." Supplemental Rep
p. 31. "[T]he evidence presented with respect to dan
from predatory rivals seemed to the Board lacking in
ficiency, especially so in the light of the evidence conc
ing membership growth." *Ibid.* "[N]o evidence
presented indicating that the unions stand in jeopardy
reason of carrier opposition. A few railroads were m
tioned on which some of the unions do not represe
majority of their craft or class, and do not have barg
ing relationships with the carrier. But the exhibits sh
that these unions are the chosen representatives of
employees on the overwhelming majority of the railro
and that recognition of the unions is general. The Bo
does not find therefore that a sufficient case has b
made for the necessity of additional protection of un
status on the railroads." *Id.*, p. 32. The unions acce
to the Board's recommendation.

The question of union security was reopened in 195
Congress then evaluated the proposal for authorizing

[10] At the time of the congressional deliberations which preceded
enactment of the Labor-Management Relations Act of 1947,
Trainmen, through their president, A. F. Whitney, advocated
closed shop, and urged the repeal of the provisions which prohibite
Hearings on Amendments to the National Labor Relations Act, H
Committee on Education and Labor, 80th Cong., 1st Sess., pp. 1
1552, 1561. However, the Railway Labor Executives' Associa
opposed amendment of the 1934 Act. A. E. Lyon, executive secre
of the Association, said: "We want to make it very clear that w
proposing no amendments to the Railway Labor Act. We believe
none is necessary, and we are opposed to those which Mr. Whi
suggested." Hearings, p. 3722. Lyon added: "We are not asking

union shop primarily in terms of its relatio
financing of the unions' participation in th
created by the Railway Labor Act to achie
The framework for fostering voluntary adju
tween the carriers and their emp' yees in th
the efficient discharge by the carriers of the
functions with minimum disruption from lab
no statutory parallel in other industry. Tha
the product of a long legislative evolution, i
plex than that of any other industry. The la
of interstate carriers have been a subject of c
enactments since 1888.[11] For a time, after W

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to amend the Railroad Labor Act and provide a clos
Whitney did. We do not think it is necessary."
response to the query, "By the services you have perf
members you have attracted people voluntarily to joi
correct?" Lyon replied: "I think that is true. An
union people believe they would rather have membe
because they want to, rather than because they have

[11] The Act of 1888, 25 Stat. 501, authorized the cre
of voluntary arbitration to settle controversies betwe
their employees which threatened to disrupt transp
The Act also provided for a temporary president
to investigate the causes of a controversy and the
adjusting it; the commission was to report the result
gation to the President and Congress. § 6.

In 1898 Congress repealed the Act of 1888 and pass
Act, 30 Stat. 424, providing that "whenever a contro
ing wages, hours of labor, or conditions of employm
between a carrier subject to this Act and the emp
carrier, seriously interrupting or threatening to inter
ness of said carrier," the Chairman of the Interst
Commission and the Commissioner of Labor should att
the dispute, at the request of either party, by concilia
ation. § 2. If these methods failed, a board of volu
tion could be set up with representatives on it of the
"labor organization to which the employees direc
belong . . . ." § 3. Section 10 of the Act also made
an employer to require an employee to promise not
remain a member of a labor organization or to discri

tionship to the
the machinery
hieve its goals.
djustments be-
the interest of
their important
labor strife has
That machinery,
n, is more com-
e labor relations
of congressional
er World War I,

closed shop as Mr.
ry." P. 3724. In
performed for your
join. Is that not
And many of our
embers that belong
have to." P. 3732.
creation of boards
etween carriers and
ransportation. § 1.
dential commission
the best means of
esults of its investi-

passed the Erdman
ontroversy concern-
loyment shall arise
employees of such
interrupt the busi-
terstate Commerce
d attempt to resolve
nciliation and medi-
voluntary arbitra-
the carrier and the
directly interested
made it criminal for
e not to become or
discriminate against



Congress experimented with a form of compulsory
tration.[12] The experiment was unsuccessful. Co
has since that time consistently adhered to a regu
policy which places the responsibility squarely up

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an employee for such membership, a provision which was held
stitutional in *Adair* v. *United States*, 208 U. S. 161.

The Erdman Act was superseded in 1913 by the passage
Newlands Act, 38 Stat. 103. It created a Board of Mediati
Conciliation to which either party to a controversy could re
dispute and which could proffer its services even without re
an interruption of traffic was imminent and seriously jeopardi
public interest. The Board also was authorized to give opin
to the meaning or application of agreements reached through
tion. § 2. The arbitration procedures set up by the Erdman A
further elaborated. §§ 3–8.

In 1916 Congress imposed the 8-hour day on the railro
Stat. 721. During the period of federal operation of the railr
World War I and afterwards the Federal Government e
agreements with many of the national labor organizations as
sentatives of the railroad employees. Boards of adjustment w
set up to handle disputes concerning the interpretation and a
tion of agreements. See Hearings on S. 3295, Subcommi
Senate Committee on Labor and Public Welfare, 81st Cong., 2
pp. 216, 305. By the Transportation Act of 1920, 41 Sta
Congress terminated federal control and established an ex
new regulatory scheme. See n. 12, *infra*. See generally Hear
S. 3463, Subcommittee of the Senate Committee on Labor and
Welfare, 81st Cong., 2d Sess., pp. 124–131.

[12] The Transportation Act of 1920 provided for a Railroad
Board, with power to render a decision in disputes between
and their employees over wages, grievances, rules, or working
tions not resolved through conference and adjustment proc
§ 307. In rendering a decision on wages or working conditio
Board had a duty to establish wages and conditions which in it
ion were "just and reasonable." § 307 (d). It was held, h
that the decisions of the Board could not be enforced by legal
See *Pennsylvania R. Co.* v. *United States Railroad Labor Boa*
U. S. 72; *Pennsylvania R. System* v. *Pennsylvania R. C*
U. S. 203. By 1926 the Board had lost the confidence of b
unions and many of the railroads. Commented the Senate C
tee which considered the Railway Labor Act of 1926: "In view

carriers and the unions mutually to work o
of all aspects of the labor relationship. T
embodied in the Railway Labor Act of 192
which remains the basic regulatory enact
Senate Report on the bill which became th
"The question was . . . presented whether
[for the Act of 1920] should consist of a c
tem with adequate means provided for its e
whether it was in the public interest
machinery for amicable adjustment of
agreed upon by the parties and to the su
both parties were committed. . . . The c
opinion that it is in the public interest to
trial of the method of amicable adjustmen
by the parties, rather than to attempt
conditions to use the entire power of the
deal with these labor disputes." S. Rep.
Cong., 1st Sess., p. 4. The reference to th
upon by the parties" was to "the fact tha
Labor Act of 1926 came on the statute
agreement between the railroads and the
on the need for such legislation. It is a
that the railroads and the railroad unions
wrote the Railway Labor Act of 1926

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fact that the employees absolutely refuse to appea
board and that many of the important railroad
opposed to it, that it has been held by the Supreme
power to enforce its judgments, that its authority is
respected by the employees and by a number of im
that the President has suggested that it would be w
stitute for it, and that the party platforms of bot
and Democratic Parties in 1924 clearly indicated d
the provisions of the transportation act relating t
mittee concluded that the time had arrived when
should be abolished and the provisions relating to l
portation act, 1920, should be repealed." S. Re
Cong., 1st Sess., pp. 3–4.

k out settlements
That policy was
926, 44 Stat. 577.
actment. As the
that law stated:
her the substitute
a compulsory sys-
ts enforcement, or
st to create the
of labor disputes
success of which
he committee is of
t to permit a fair
ment agreed upon
pt under existing
he Government to
Rep. No. 606, 69th
o the plan "agreed
that the Railway
ute books through
he railroad unions
is accurate to say
ions between them
926 and Congress

ppear before the labor
ilroads are themselves
preme Court to have no
ity is not recognized or
of important railroads,
l be wise to seek a sub-
f both the Republican
ted dissatisfaction with
ting to labor, the com-
when the labor board
g to labor in the trans-
3. Rep. No. 606, 69th



formally enacted their agreement." *Railway Em*
*Dept.* v. *Hanson*, *supra*, p. 240 (concurring
See generally Murphy, Agreement on the Railroa
Joint Railway Conference of 1926, 11 Lab. L. J.

"All through the [1926] act is the theory
agreement is the vital thing in life." State
Donald R. Richberg, Hearings on H. R. 7180, Hou
mittee on Interstate and Foreign Commerce, 69t
1st Sess., pp. 15–16. The Act created affirmat
duties on the part of the carriers and their emplo
exert every reasonable effort to make and mainta
ments concerning rates of pay, rules, and worki
tions, and to settle all disputes, whether arisin
the application of such agreements or otherwis
§ 2, First. See *Texas & N. O. R. Co.* v. *Brothe*
*Railway & Steamship Clerks*, 281 U. S. 548.
also established a comprehensive administrati
ratus for the adjustment of disputes, in confer
tween the parties, § 2, Second, Third and Fou
Sixth), and if not so settled, in submissions to
adjustment, § 3, or the National Mediation Bo
And the legislation expanded the already existin
tary arbitration machinery, §§ 7, 8, 9.

A primary purpose of the major revisions mad
was to strengthen the position of the labor orga
*vis-à-vis* the carriers, to the end of furthering
cess of the basic congressional policy of sel
ment of the industry's labor problems betwee
organizations and effective labor organizatio
unions claimed that the carriers interfered
employees' freedom of choice of representatives
ing company unions, and otherwise attempting
mine the employees' participation in the proce
lective bargaining. Congress amended § 2,
reinforce the prohibitions against interference
choice of representatives, and to permit the e

to select nonemployee representatives.
Fourth was added guaranteeing employe
organize and bargain collectively, and
it the enforceable duty of the carriers
the representatives of the employees, §
*Virginian R. Co.* v. *System Federation*, 30
was made explicit that the representativ
majority of any class or craft of employee
exclusive bargaining representative of all
of that craft or class. "The minority me
are thus deprived by the statute of the ri
would otherwise possess, to choose a re
their own, and its members cannot barga
on behalf of themselves as to matters whi
the subject of collective bargaining." *Ste*
*& N. R. Co.*, 323 U. S. 192, 200. "Congre
clothe the bargaining representative wit
parable to those possessed by a legislativ
create and restrict the rights of those
sents . . . ." *Id.*, p. 202. In addition to t
ing the unions' status in relation to both
the employees, the 1934 Act created the
road Adjustment Board and provided th
ployee representatives were to be chose
organizations national in scope. § 3.
given jurisdiction to settle what are ter
putes in the railroad industry, primarily gr
from the application of collective bargain
to particular situations. See *Union Pa*
*Price*, 360 U. S. 601.

In sum, in prescribing collective bar
method of settling railway disputes, in
the unions the status of exclusive repres
negotiation and administration of collect
and in giving them representation on the
to adjudicate grievances, Congress has giv

es. A new § 2,
yees the right to
d Congress made
s "to treat with"
§ 2, Ninth. See
300 U. S. 515. It
tive selected by a
yees should be the
all the employees
members of a craft
e right, which they
representative of
rgain individually
which are properly
*Steele* v. *Louisville*
gress has seen fit to
with powers com-
ative body both to
se whom it repre-
to thus strengthen-
oth the carriers and
the National Rail-
d that the 18 em-
nosen by the labor
. This Board was
termed minor dis-
ly grievances arising
gaining agreements
*Pacific R. Co.* v.

bargaining as the
in conferring upon
presentatives in the
llective agreements,
the statutory board
s given the unions a



clearly defined and delineated role to play in eff
the basic congressional policy of stabilizing labor
in the industry. "It is fair to say that every ste
evolution of this railroad labor code was pro
infused with the purpose of securing self-ad
between the effectively organized railroads and th
effective railroad unions and, to that end, of est
facilities for such self-adjustment by the railr
munity of its own industrial controversies. .
assumption as well as the aim of that Act [of 1
process of permanent conference and negotiation
the carriers on the one hand and the employees
their unions on the other." *Elgin, J. & E. R
Burley*, 325 U. S. 661, 752–753 (dissenting opin

Performance of these functions entails the
ture of considerable funds. Moreover, this C
held that under the statutory scheme, a union
as exclusive bargaining representative carries w
duty fairly and equitably to represent all emp
the craft or class, union and nonunion. *Steele
ville & N. R. Co.*, 323 U. S. 192; *Tunstall* v. *Bro
of Locomotive Firemen & Enginemen*, 323 U. S. 2
principal argument made by the unions in 1950 w
on their role in this regulatory framework. Th
tained that because of the expense of perform
duties in the congressional scheme, fairness jus
spreading of the costs to all employees who b
They thus advanced as their purpose the elimi
the "free riders"—those employees who obtained
fits of the unions' participation in the machine
Act without financially supporting the unions.

George M. Harrison, spokesman for the Railw
Executives' Association, stated the unions' cas
fashion:

> "Activities of labor organizations resultin
> procurement of employees benefits are co

the only source of funds with which to carry on these activities is the dues received from members of the organization. We believe that it is essentially unfair for nonmembers to participate in the benefits of these activities without contributing anything to the cost. This is especially true when the collective bargaining representative is one from whose existence and activities he derives most important benefits and one which is obligated by law to extend these advantages to him.

"Furthermore, collective bargaining to the railroad industry is more costly from a monetary standpoint than that carried on in any other industry. The administrative machinery is more complete and more complex. The mediation, arbitration, and Presidential Emergency Board provisions of the act, while greatly in the public interest, are very costly to the unions. The handling of agreement disputes through the National Railroad Adjustment Board also requires expense which is not known to unions in outside industry." Hearings on H. R. 7789, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., p. 10.

This argument was decisive with Congress. The House Committee Report traced the history of previous legislation in the industry and pointed out the duty of the union acting as exclusive bargaining representative to represent equally all members of the class. "Under the act, the collective bargaining representative is required to represent the entire membership of the craft or class, including nonunion members, fairly, equitably, and in good faith. Benefits resulting from collective bargaining may not be withheld from employees because they are not members of the union." H. R. Rep. No. 2811, 81st Cong., 2d Sess., p. 4. Observing that about 75% or 80% of all railroad employees were believed to belong to a union, the report continued: "Nonunion members, neverthe-

less, share in the benefits derived from collective agreements negotiated by the railway labor unions but bear no share of the cost of obtaining such benefits." *Ibid.*[13] These considerations overbore the arguments in favor of the earlier policy of complete individual freedom of choice. As we said in *Railway Employees' Dept.* v. *Hanson, supra,* p. 235, "[t]o require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs may not be the wisest course. But Congress might well believe that it would help to insure the right to work in and along the arteries of interstate commerce. No more has been attempted here. . . . The financial support required relates . . .

[13] For reiteration by various union spokesmen of this purpose of eliminating the problems created by the "free rider," see Hearings on S. 3295, *supra,* pp. 6, 32–33, 36, 40, 66, 130, 236–237; Hearings on H. R. 7789, *supra,* pp. 9, 19, 25–26, 29, 37–38, 49–50, 79, 81, 85, 87, 89, 228, 240–241, 250, 253, 255, 275. For other statements by members of Congress indicating their acceptance of this justification for the legislation, see Senate Hearings, *supra,* pp. 169–171; House Hearings, *supra,* pp. 25, 87, 106, 110, 139; 96 Cong. Rec. 16279, 17050–17051, 17055, 17057, 17058.

Mr. Harrison expressly disclaimed that the union shop was sought in order to strengthen the bargaining power of the unions. He said:

"I do not think it would affect the power of bargaining one way or the other . . . . If I get a majority of the employees to vote for my union as the bargaining agent, I have got as much economic power at that stage of development as I will ever have. The man that is going to scab—he will scab whether he is in or out of the union, and it does not make any difference." House Hearings, *supra,* pp. 20–21.

Nor was any claim seriously advanced that the union shop was necessary to hold or increase union membership. The prohibition against union security in the 1934 Act had not interfered with the growth of union membership or caused the unions to lose their positions as exclusive bargaining agents. See *AFL* v. *American Sash Co.,* 335 U. S. 548–549, n. 4 (concurring opinion); see also Exhibits W-23, W-28, pp. 38–51, Transcript of Proceedings, Presidential Emergency Board No. 98, appointed pursuant to Exec. Order No. 10306, Nov. 15, 1951, Carriers' Exhibits W-23, W-28, pp. 38–51

to the work of the union in the realm of collective bargaining." [14] The conclusion to which this history clearly points is that § 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes.[15] One looks

[14] The unions continued to urge the elimination of the problems created by the "free rider" as the justification for the union shop in the proceedings before the Presidential Emergency Board which recommended that the carriers make the agreements involved in this case. Mr. Harris said: ". . . the railroad unions' primary purpose in seeking and obtaining the amendment to the Railway Labor Act in 1951 to permit the check-off for payments of dues, was to eliminate the 'free rider,' the guy who drags his feet, a term which is applied by unions to non-members who obtain, without cost to themselves, the benefits of collective bargaining procured through the efforts of the dues-paying members." Transcript of Proceedings, Presidential Emergency Board No. 98, appointed pursuant to Exec. Order No. 10306, Nov. 15, 1951, p. 150. See also Transcript, pp. 40–44, 144–156, 182–183, 186–188, 202–203, 268, 283–286, 289, 545, 608–611, 1893, 1901, 2136, 2495–2497, 2795, 2839, 2930, 3014–3015, 3018–3019.

[15] Section 2, Eleventh (c), which gives scope for intercraft mobility in the rail industry, is consistent with the view that the primary union and congressional concern was with the elimination of the "free rider" who did not support his representative's performance of its functions under the Act. The section provides that an operating employee cannot be required to become a member of his craft or class representative if "said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services . . . ." This Court held in *Pennsylvania R. Co.* v. *Rychlik*, 352 U. S. 480, that the unions "national in scope" contemplated by this provision are those which have already qualified as electors under § 3 of the Act to participate in the National Railroad Adjustment Board. As the court said in *Pigott* v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949, 955, n. 11, aff'd, 221 F. 2d 736: "Each union participating in the agencies of the Act must itself pay for the salaries and expenses of its officials who serve in such agencies. This constitutes a considerable financial burden

in vain for any suggestion that Congress also meant in § 2. Eleventh to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.

## III.

### The Safeguarding of Rights of Dissent.

To the contrary, Congress incorporated safeguards in the statute to protect dissenters' interests. Congress became concerned during the hearings and debates that the union shop might be used to abridge freedom of speech and beliefs. The original proposal for authorization of the union shop was qualified in only one respect. It provided "That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member . . . ." This was primarily designed to prevent discharge of employees for nonmembership where the union did not admit the employee to membership on racial grounds. See House Hearings, p. 68; Senate Hearings, pp. 22–25. But it was strenuously protested that the proposal provided no protection for an employee who disagreed with union policies or leadership. It was argued, for example, that "the right of free speech is at

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which must be reflected in the dues charged the employees. Unless a labor organization were obliged to participate in the judgment board machinery before it could qualify for the union shop exception, it would place the bargaining representative in an unfair competitive position with respect to a rival union. Employees would be tempted to desert the organization of a bargaining representative which was assuming its responsibilities under the Act in favor of another union which was not contributing to its operation and which could thereby offer cheaper dues. This would defeat the very purpose of the union amendment which is to compel each employee to contribute his part to the bargaining representative's activities on his behalf, including its participation in the administrative machinery of the Act."

stake . . . . A man could feel that he was no lon
able freely to express himself because he could be
missed on account of criticism of the union . .
House Hearings, p. 115; see also Senate Hearings,
167–169, 320. Objections of this kind led the rail uni
to propose an addition to the proviso to § 2, Eleventh
prevent loss of job for nonunion membership "w
respect to employees to whom membership was denied
terminated for any reason other than the failure of
employee to tender the periodic dues, fees, and assessme
uniformly required as a condition of acquiring or reta
ing membership." House Hearings, p. 247. Mr. Ha
son presented this text and stated, "It is submitted t
this bill with the amendment as suggested in this sta
ment remedies the alleged abuses of compulsory un
membership as claimed by the opposing witnesses,
makes possible the elimination of the 'free rider' and
sharing of the burden of maintenance by all the be
ficiaries of union activity." House Hearings, p.
Mr. Harrison also sought to reassure Committee memb
as to the possible implications of other language of
proposed bill; he explained that "fees" meant "initiat
fees," and "assessments" was intended primarily to co
the situation of a union which had only nominal d
so that its members paid "an assessment to finance
activities of the general negotiating committee . .
will vary month by month, based on the expenses
work of that committee." P. 257. Or, he explained
assessment might cover convention expenses. "So
had to use the word 'assessment' in addition to dues
fees because some of the unions collect a nominal amo
of dues and an assessment month after month to fina
part of the activities, although in total it perhaps is
different than the dues paid in the first instance wh
comprehended all of those expenses." P. 258. In

porting the bill, the Senate Committee expressly noted the protective proviso, S. Rep. No. 2262, 81st Cong., 2d Sess., pp. 3–4, and affixed additional limitations. The words "not including fines and penalties" were added, to make it clear that termination of union membership for their nonpayment would not be grounds for discharge. It was also made explicit that "fees" meant "initiation fees." See 96 Cong. Rec. 16267–16268.

A congressional concern over possible impingements on the interests of individual dissenters from union policies is therefore discernible. It is true that opponents of the union shop urged that Congress should not allow it without explicitly regulating the amount of dues which might be exacted or prescribing the uses for which the dues might be expended.[16] We may assume that Congress was also fully conversant with the long history of intensive involvement of the railroad unions in political activities. But it does not follow that § 2, Eleventh places no restriction on the use of an employee's money, over his objection, to support political causes he opposes merely because Congress did not enact a comprehensive regulatory scheme governing expenditures. For it is abundantly clear that Congress did not completely abandon the policy of full freedom of choice embodied in the 1934 Act, but rather made inroads on it for the limited purpose of eliminating the problems created by the "free rider." That policy survives in § 2, Eleventh in the safeguards intended to protect freedom of dissent. Congress was aware of the conflicting interests involved in the question of the union shop and sought to achieve their accommodation. As was said by the Presidential Emergency Board which recommended

[16] See Senate Hearings, pp. 173–174, 316–317; House Hearings, pp. 160, 172–173. See also 96 Cong. Rec. 17049–17050.

the making of the union-shop agreement involved
case:

> "It is not as though Congress had believed
> merely removing some abstract legal barrier a
> passing on the merits. It was made fully awa
> it was deciding these critical issues of individu
> versus collective interests which have been s
> in this proceeding.
>
> "Indeed, Congress gave very concrete ev
> that it carefully considered the claims of th
> vidual to be free of arbitrary or unreasonable
> tions resulting from compulsory unionism.
> not give a blanket approval to union-shop
> ments. Instead it enacted a precise and ca
> drawn limitation on the kind of union-shop
> ments which might be made. The obvious p
> of this careful prescription was to strike a b
> between the interests pressed by the unions a
> considerations which the Carriers have urge
> providing that a worker should not be discharg
> was denied or if he lost his union membership
> reason other than nonpayment of dues, initiati
> or assessments, Congress definitely indicated
> had weighed carefully and given effect to the
> of the arguments against the union shop."
> of Presidential Emergency Board No. 98, app
> pursuant to Exec. Order No. 10306, Nov. 15, 19

We respect this congressional purpose when we co
§ 2, Eleventh as not vesting the unions with un
power to spend exacted money. We are not calle
to delineate the precise limits of that power in th
We have before us only the question whether the
is restricted to the extent of denying the unions th
over the employee's objection, to use his money
port political causes which he opposes. Its use to s

candidates for public office, and advance political programs, is not a use which helps defray the expenses of the negotiation or administration of collective agreements, or the expenses entailed in the adjustment of grievances and disputes. In other words, it is a use which falls clearly outside the reasons advanced by the unions and accepted by Congress why authority to make union-shop agreements was justified. On the other hand, it is equally clear that it is a use to support activities within the area of dissenters' interests which Congress enacted the proviso to protect. We give § 2 Eleventh the construction which achieves both congressional purposes when we hold, as we do, that § 2 Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes."[17]

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[17] A distinction between the use of union funds for political purposes and their expenditure for nonpolitical purposes is implicit in other congressional enactments. Thus the Treasury has adopted this regulation under § 162 of the Internal Revenue Code to govern the deductibility for income-tax purposes of payments by union members to their union:

"Dues and other payments to an organization, such as a labor union or a trade association, which otherwise meet the requirements of the regulations under section 162, are deductible in full unless a substantial part of the organization's activities consists of [expenditures for lobbying purposes, for the promotion or defeat of legislation for political campaign purposes (including the support of or opposition to any candidate for public office), or for carrying on propaganda (including advertising) related to any of the foregoing purposes] . . . . If a substantial part of the activities of the organization consists of one or more of those specified, deduction will be allowed only for such portion of such dues and other payments as the taxpayer can clearly establish is attributable to activities other than those so specified. The determination as to whether such specified activities constitute a substantial part of an organization's activities shall be based on all the facts and circumstances. In no event shall special assessments or similar payments (including a

We express no view as to other union ex
objected to by an employee and not made to
costs of negotiation and administration of
agreements, or the adjustment and settlemen
ances and disputes. We do not understand,
the findings of the Georgia courts and the
decided by the Georgia Supreme Court, tha
before us the matter of expenditures for activi
area between the costs which led directly to
plaint as to "free riders," and the expenditures
union political activities.[18] We are satisfied,
that § 2, Eleventh is to be interpreted to deny
the power claimed in this case. The appella
in insisting that § 2, Eleventh contemplates
of exacted funds to support political causes o
by the employee, would have us hold that Con
tioned an expansion of historical practices in th
area by the rail unions. This we decline to do.
tradition and, from 1934 to 1951, by force o
rail unions did not rely upon the compulsion
security agreements to exact money to support
cal activities in which they engage. Our co
therefore involves no curtailment of the traditio
cal activities of the railroad unions. It means
those unions must not support those activitie
the expressed wishes of a dissenting employee
exacted money.[19]

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increase in dues) made to any organization for any of s
purposes be deductible." 26 CFR § 1.162–15 (c) (2); s
Proc. 61–10, Int. Rev. Bull., April 17, 1961, p. 49. Cf.
v. *United States*, 358 U. S. 498.

[18] For example, many of the national labor unions ma
benefit funds from the dues of individual members tra
the locals.

[19] In 1958 Senator Potter proposed an amendment to p
legislation that would have given employees subject to

expenditures
to meet the
of collective
ent of griev-
d, in view of
the question
that there is
tivities in the
to the com-
res to support
ied, however,
ny the unions
ellant unions,
tes their use
es objected to
Congress sanc-
n the political
do. Both by
e of law, the
sion of union
ort the politi-
construction
litional politi-
ans only that
vities, against
oyee, with his

of such specified
); see also Rev.
Cf. *Cammarano*

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s transmitted by

to pending labor
to a union-shop



## IV.

### The Appropriate Remedy.

Under our view of the statute, however, the decis
the court below was erroneous and cannot stand.
appellees who have participated in this action have
course of it made known to their respective unions
objection to the use of their money for the suppo
political causes. In that circumstance, the respe
unions were without power to use payments there
tendered by them for such political causes. Howeve
union-shop agreement itself is not unlawful. *Ra
Employees' Dept.* v. *Hanson*, *supra*. The appellees
fore remain obliged, as a condition of continued em
ment, to make the payments to their respective u
called for by the agreement. Their right of action
not from constitutional limitations on Congress'
to authorize the union shop, but from § 2, Eleventh
In other words, appellees' grievance stems from the s

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agreement the right to have their dues used only for collectiv
gaining and related purposes and would have required the Sec
of Labor, if he determined that the dues were not so expend
bring an action in behalf of the dissenter for the recovery of
money paid by the dissenter to the union during the life of the
ment and for such other appropriate and injunctive relief as the
deemed just and proper. See 104 Cong. Rec. 11330. Senator
advanced this proposal to implement principles which he belie
be already implicit in the labor laws. He said, "I know that
Congress enacted legislation providing for labor and managem
enter into contracts for union shops it was intended, under the
shop principle, that labor would use the dues for collective-ba
ing purposes." 104 Cong. Rec. 11215; see also *id.*, p. 11331.
failure of the amendment to be adopted reflected disagreement
Senate over the scope of its coverage and doubts as to the pro
of the breadth of the remedy. See 104 Cong. Rec. 11214–
11330–11347.

ing of their funds for purposes not authorize
in the face of their objection, not from the en
the union-shop agreement by the mere
funds. If their money were used for purp
plated by § 2, Eleventh, the appellees wo
grievance at all. We think that an injunct
ing enforcement of the union-shop agreemen
plainly not a remedy appropriate to the vio
Act's restriction on expenditures. Restrain
lection of all funds from the appellees sweeps
since their objection is only to the uses to w
their money is put. Moreover, restraining
the funds as the Georgia courts have done
interfere with the appellant unions' perform
functions and duties which the Railway Lab
upon them to attain its goal of stability in
Even though the lower court decree is subje
cation upon proof by the appellants of cess
proper expenditures, in the interim the p
absolute against the collection of all funds
who can show that he is opposed to the expen
of his money for political purposes which he
The complete shutoff of this source of incom
congressional plan to have all employees be
costs "in the realm of collective bargaining,"
U. S., at p. 235, and threatens the basic
policy of the Railway Labor Act for self-adj
tween effective carrier organizations and ef
organizations.[20]

Since the case must therefore be remanded
below for consideration of a proper remedy, w
it is appropriate to suggest the limits within

[20] Compare Senator Kennedy's objection to the re
ery of all dues contemplated by the Potter amendme
Rec. 11346.

rized by the Act
enforcement of
e collection of
rposes contem-
would have no
nction restrain-
nent is therefore
violation of the
raining the col-
eps too broadly,
o which some of
ing collection of
lone might well
rmance of those
Labor Act places
in the industry.
bject to modifi-
cessation of im-
e prohibition is
ds from anyone
penditure of any
he disapproves.
come defeats the
benefited share
ng," *Hanson*, 351
sic congressional
-adjustments be-
d effective labor

nded to the court
dy, we think that
thin which reme-

e remedy for recov-
ndment. 104 Cong.



dial discretion may be exercised consistently w
Railway Labor Act and other relevant public
As indicated, an injunction against enforcement
union shop itself through the collection of funds is
ranted. We also think that a blanket injunction
all expenditures of funds for the disputed purpos
one conditioned on cessation of improper exper
would not be a proper exercise of equitable dis
Nor would it be proper to issue an interim or ter
blanket injunction of this character pending a fin
dication. The Norris-LaGuardia Act, 47 Stat.
U. S. C. §§ 101–115, expresses a basic policy aga
injunction of activities of labor unions. We ha
that the Act does not deprive the federal courts
diction to enjoin compliance with various mandat
Railway Labor Act. *Virginia R. Co.* v. *System*
*tion*, 300 U. S. 515; *Graham* v. *Brotherhood of Loc*
*Firemen & Enginemen*, 338 U. S. 232. However,
icy of the Act suggests that the courts should hes
fix upon the injunctive remedy for breaches of dut
under the labor laws unless that remedy alone ca
tively guard the plaintiff's right. In *Graham* thi
found an injunction necessary to prevent the br
the duty of fair representation, in order that C
might not seem to have held out to the petitione
"an illusory right for which it was denying
remedy.". 338 U. S., at p. 240. No such necessi
blanket injunctive remedy because of the absence
sonable alternatives appears here. Moreover,
that these expenditures are made for political a
is an additional reason for reluctance to impose
injunctive remedy. Whatever may be the po
Congress or the States to forbid unions altogether
various types of political expenditures, as to wh

express no opinion here,[21] many of the
involved in the present case are made for
disseminating information as to candidates
and publicizing the positions of the un
As to such expenditures an injunction
restraint on the expression of political idea
be offensive to the First Amendment. Fo
also has an interest in stating its views
silenced by the dissenters. To attain th
reconciliation between majority and disse
in the area of political expression, we thin
administering the Act should select remed
tect both interests to the maximum e
without undue impingement of one on the

Among possible remedies which would
priate to the injury complained of, two m
with a minimum of administrative difficu
little danger of encroachment on the legiti
or necessary functions of the unions.
however, would properly be granted only
who have made known to the union officia
not desire their funds to be used for poli
which they object. The safeguards of § 2,

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[21] No contention was made below or here that an
tures involved in this case were made in violatio
Corrupt Practices Act, 18 U. S. C. § 610, or a
practices legislation.

[22] We note that the Labor Management Reporti
Act of 1959 requires every labor organization subj
labor laws to file annually with the Secretary of
report as to certain specified disbursements and als
ments made by it including the purposes thereof . .
Each union is also required to maintain records in
supply the necessary basic information and data
report may be verified. § 206. The information re
tained in such report must be available to all
§ 201 (c).

the expenditures
for the purpose of
ates and programs
unions on them.
on would work a
ideas which might
For the majority
ws without being
the appropriate
issenting interests
hink the courts in
nedies which pro-
extent possible
the other.

uld appear appro-
may be enforced
ficulty [22] and with
gitimate activities
. Any remedies,
only to employees
icials that they do
political causes to
§ 2, Eleventh were

at any of the expendi-
lation of the Federal
or any state corrupt

porting and Disclosure
subject to the federal
of Labor a financial
also "other disburse-
. . . . § 201 (b)(6).
s in sufficient detail to
data from which the
on required to be con-
all union members.



added for the protection of dissenters' interest.
sent is not to be presumed—it must affirmatively
known to the union by the dissenting employe
union receiving money exacted from an employe
a union-shop agreement should not in fairness
jected to sanctions in favor of an employee wh
no complaint of the use of his money for such a
From these considerations, it follows that the
action is not a true class action, for there is no at
prove the existence of a class of workers who ha
cally objected to the exaction of dues for polit
poses. See *Hansberry* v. *Lee*, 311 U. S. 32, 44.
think that only those who have identified them
opposed to political uses of their funds are en
relief in this action.

One remedy would be an injunction against
ture for political causes opposed by the com
employee of a sum, from those moneys to be spe
union for political purposes, which is so muc
moneys exacted from him as is the proportio
union's total expenditures made for such politic
ities to the union's total budget. The union sh
be in a position to make up such sum from mo
by a nondissenter, for this would shift a dispropo
share of the costs of collective bargaining to
senter and have the same effect of applying his m
support such political activities. A second
would be restitution to an individual employee
portion of his money which the union expended
his notification, for the political causes to which
advised the union he was opposed. There shou
necessity, however, for the employee to trace hi
up to and including its expenditure; if the mo
into general funds and no separate accounts of
and expenditures of the funds of individual emplo
maintained, the portion of his money the employe

be entitled to recover would be in the same proportion that the expenditures for political purposes which he had advised the union he disapproved bore to the total union budget.

The judgment is reversed and the case is remanded to the court below for proceedings not inconsistent with this opinion.

*Reversed and remanded.*

# SUPREME COURT OF THE UNITED STATES

No. 4.—October Term, 1960.

International Association of Machinists, et al., Appellants, v. S. B. Street, et al. | On Appeal From the Supreme Court of Georgia.

[June 19, 1961.]

Mr. Justice Douglas, concurring.

Some forced associations are inevitable in an industrial society. One who of necessity rides busses and street cars does not have the freedom that John Muir and Walt Whitman extolled. The very existence of a factory brings into being human colonies. Public housing in some areas may of necessity take the form of apartment buildings which to some may be as repulsive as ant hills. Yet people in teeming communities often have no other choice.

Legislatures have some leeway in dealing with the problems created by these modern phenomena.

Collective bargaining is a remedy for some of the problems created by modern factory conditions. The beneficiaries are all the members of the laboring force. We therefore concluded in *Railway Employees' Dept.* v. *Hanson*, 351 U. S. 225, that it was permissible for the legislature to require all who gain from collective bargaining to contribute to its cost.[1] That is the narrow and precise holding of the *Hanson* case, as Mr. Justice Black shows.

Once an association with others is compelled by the facts of life, special safeguards are necessary lest the

[1] The problem of employees who receive benefits of union representation but who are unwilling to give financial support to the union has received much attention by Congress (see S. Rep. No. 105, 80th Cong., 1st Sess., pp. 411–413; H. R. Rep. No. 510, 80th Cong., 1st Sess., pp. 546, 547) and by the courts. See *Radio Officers* v. *Labor Board*, 347 U. S. 17.

spirit of the First, Fourth, and Fifth Amendments be lost and we all succumb to regimentation. I expressed this concern in *Public Utilities Comm'n* v. *Pollak*, 343 U. S. 451, 467 (dissenting opinion), where a "captive audience" was forced to listen to special radio broadcasts. If an association is compelled, the individual should not be forced to surrender any matters of conscience, belief, or expression. He should be allowed to enter the group with his own flag flying, whether it be religious, political, or philosophical; nothing that the group does should deprive him of the privilege of preserving and expressing his agreement, disagreement, or dissent, whether it coincides with the view of the group, or conflicts with it in minor or major ways; and he should not be required to finance the promotion of causes with which he disagrees.

In a debate on the Universal Declaration of Human Rights, later adopted by the General Assembly of the United Nations on December 10, 1948, Mr. Malik of Lebanon stated what I think is the controlling principle in cases of the character now before us:

> "The social group to which the individual belongs may, like the human person himself, be wrong or right: the person alone is the judge." [2]

This means that membership in a group cannot be conditioned on the individual's acceptance of the group's philosophy.[3] Otherwise First Amendment rights are

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[2] Commission on Human Rights, Summary Record of Fourteenth Meeting, February 4, 1947, U. N. Doc. E/CN.4/SR.14, p. 4.

[3] We noted in the *Hanson* case, 351 U. S. 236–237, n. 8, various restrictions placed by union constitutions and by-laws on individual members. Some disqualified persons from membership for their political views or associations. Certainly government could not prescribe standards of that character.

Some restrained members from certain kinds of speech or activity. Certainly government could not impose these restraints.

Some required the use of portions of union funds for purposes other than collective bargaining. Plainly those conditions could not

required to be exchanged for the group's attitude, philosophy, or politics. I do not see how that is constitutionally permissible under the Constitution. Since neither Congress nor the state legislatures can abridge those rights, they cannot grant the power to private groups to abridge them. As I read the First Amendment it forbids any abridgment by government whether directly or indirectly.

The collection of dues for paying the costs of collective bargaining of which each member is a beneficiary is one thing. If, however, dues are used, or assessments are made, to promote or oppose birth control, to repeal or increase the taxes on cosmetics, to promote or oppose the admission of Red China into the United Nations, and the like, then the group compels an individual to support with his money causes beyond what gave rise to the need for group action.

I think the same must be said when union dues or assessments are used to elect a Governor, a Congressman, a Senator, or a President. It may be said that the election of a Franklin D. Roosevelt rather than a Calvin Coolidge might be the best possible way to serve the cause of collective bargaining. But even such a selective use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority. I do not see how that can be done, even though the objector retains his rights to campaign, to speak, to vote as he chooses. For when union funds are used for that purpose, the individual is required to finance political projects against which he may be in rebellion.[4] The furtherance of the common cause leaves

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be imposed by the state and federal government or enforced by the judicial branch of government. See *Shelley* v. *Kraemer*, 334 U. S. 1; *Barrows* v. *Jackson*, 346 U. S. 249.

[4] Hostility to such compulsion was expressed early in our history. Madison, in his Memorial and Remonstrance Against Religious Assessments, wrote, "Who does not see . . . that the same authority

some leeway for the leadership of the group. As long a they act to promote the cause which justified bringing th group together, the individual cannot withdraw his finan cial support merely because he disagrees with the group' strategy. If that were allowed, we would be reversin the *Hanson* case, *sub silentio*. But since the funds her in issue are used for causes other than defraying the cost of collective bargaining, I would affirm the judgmen below with modifications. Although I recognize th strength of the arguments advanced by my Brother BLACK and WHITTAKER against giving a "proportional" relief to appellees in this case, there is the practical prob lem of mustering five Justices for a judgment in this case Cf. *Screws* v. *United States*, 325 U. S. 91, 134. So have concluded *dubitante* to agree to the one suggested by MR. JUSTICE BRENNAN, on the understanding tha all relief granted will be confined to the six protestin employees. This suit, though called a "class" action, doe not meet the requirements as the use or nonuse of an dues or assessments depends on the choice of each individual, not the group. See *Hansberry* v. *Lee* 31 U. S. 32, 44.

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which can force a citizen to contribute three pence only of his prop erty for the support of any one establishment, may force him t conform to any other establishment in all cases whatsoever?" I Writings of James Madison (Hunt ed. 1901), p. 186.

Jefferson in his 1779 Bill for Religious Liberty wrote "that t compel a man to furnish contributions of money for the propagatio of opinions which he disbelieves is sinful and tyrannical." See 1 Hening's Stat. 85; Brant, Madison, The Nationalist (1948), p. 35

# SUPREME COURT OF THE UNITED STATES

No. 4.—October Term, 1960.

International Association of Machinists, et al., Appellants, v. S. B. Street, et al. } On Appeal From the Supreme Court of Georgia.

[June 19, 1961.]

Mr. Justice Black, dissenting.

This action was brought in a Georgia state court by six railroad employees[1] in behalf of themselves "and others similarly situated" against railroads making up the Southern Railway System, labor organizations representing employees of that system in collective bargaining, and a number of individuals, to enjoin enforcement and application to them of a union-shop agreement entered into between the railroads and the labor organizations as authorized by § 2, Eleventh of the Railway Labor Act.[2] The agreement's terms required all employees, in order to keep their railroad jobs, to join the union and remain members, at least to the extent of tendering periodic dues, initiation fees and assessments, not including fines and penalties.[3] The complaint, as amended, charged that the

[1] Although there were more complainants when the suit was brought, there were only six when the trial was completed.

[2] 64 Stat. 1238, 45 U. S. C. § 152, Eleventh.

[3] In accordance with the requirements of the statute, the agreement provided, in language almost identical to that of the statute, that no employee would be required to become or remain a member of the union "if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employe is denied or terminated for any reason other than the failure of the employe to

agreement was void because it conflicted with the la
Constitution of Georgia and the First, Fifth, Nin
Fourteenth Amendments to the Federal Consti
Section 2, Eleventh provides that such union sho
valid "[n]otwithstanding any other . . . statute or
the United States . . . or any State." Relying
decision in *Railway Employes' Dept.* v. *Hanso*
U. S. 225, which upheld contracts made pursuant
section, the Georgia trial court dismissed the com
as amended. The State Supreme Court reverse
remanded the case for trial, distinguishing our *H*
decision as follows:

> "'It is alleged that the union dues and othe
> ments they will be required to make to the
> will be used to 'support ideological and politic
> trines and candidates' which they are unwil
> support and in which they do not believe, an
> this will violate the First, Fifth and Ninth A
> ments of the Constitution. While Railway
> Dept. *v.* Hanson, 351 U. S. 225, supra, upho
> validity of a closed shop contract executed un
> Eleventh, that opinion clearly indicates tha
> court would not approve a requirement that o
> the union if his contributions thereto were u
> this petition alleges. It is there said (headno
> 'Judgment is *reserved* [italics in Georgia Su
> Court opinion] as to the validity or enforce
> of a union or closed shop agreement if other
> tions of union membership are imposed or
> exaction of dues, initiation fees or assessments
> as a cover for forcing ideological conformity o
> action in contravention of the First or the

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tender the periodic dues, initiation fees, and assessments (no
ing fines and penalties) uniformly required as a condition of a
or retaining membership."

> Amendment.' We must render judgment now upo
> this precise question. We do not believe one ca
> constitutionally be compelled to contribute mone
> to support ideas, politics and candidates which h
> opposes . . . ."

On remand, testimony, admissions and stipulation showed without dispute that union funds collected fro dues, fees and assessments, were regularly used to suppo and oppose various political and economic program candidates, parties and ideological causes, and that th complaining employees were opposed to many of the posi tions the unions took in these matters. The trial cou made lengthy findings, one crucial here being:

> "Those funds have been and are being used i
> substantial amounts to propagate political and ec
> nomic doctrines, concepts and ideologies and to pr
> mote legislative programs opposed by plaintiffs an
> the class they represent."

The trial court then found and declared § 2, Eleven "unconstitutional to the extent that it permits, or applied to permit, the exaction of funds from plaintif and the class they represent for the complained of pu poses and activities set forth above." Compulsory mem bership under these circumstances was held to abridg First Amendment freedoms of association though speech, press and political expression.[5] On the basis this holding the trial court enjoined all the defendan "from enforcing the said union shop agreements . . and from discharging petitioners, or any member of th

[4] *Looper* v. *Georgia Southern & F. R. Co.*, 213 Ga. 279, 284, S. E. 2d 101, 104–105.

[5] The trial court also held that the section as enforced violated th Fifth, Ninth and Tenth Amendments. My view as to the Fir Amendment makes it unnecessary for me to consider the claims und the other Amendments.

class they represent, for refusing to become
members of, or pay periodic dues, fees, or assess
any of the labor union defendants, provided,
that said defendants may at any time petition th
dissolve said injunction upon a showing that
longer are engaging in the improper and unlawf
ties described above." Again, the activities re
were the use of union funds collected from fees,
assessments to support candidates, parties, or id
economic or political views contrary to the wish
complaining employees. The trial court also dec
the three employees who had been compell
protest to pay dues, fees and assessments be
the union-shop agreement were entitled to ha
payments returned.

The Supreme Court of Georgia affirmed, hol
"[o]ne who is compelled to contribute the fru
labor to support or promote political or econo
grams or support candidates for public office
much deprived of his freedom of speech as if
compelled to give his vocal support to doc
opposes." [5] I fully agree with this holding of th
Supreme Court and would affirm its judgm
certain modifications of the relief granted.

I.

Section 2, Eleventh of the Railway Labor Ac
izes unions and railroads to make union-shop ag
notwithstanding any other provision of state o
law. Such a contract simply means that no pe
keep a job with the contracting railroad unless he
a member of and pays dues to the contracti
Neither § 2, Eleventh nor any other part of the
tains any implication or even a hint that Congres

[5] 215 Ga. 27, 46, 108 S. E. 2d 796, 808.

to limit the purposes for which a contracting union
should or could be spent. All the parties to this
tion have agreed from its beginning, and still agree
there is no such limitation in the Act. The Court
theless, in order to avoid constitutional questions,
prets the Act itself as barring use of dues for po
purposes. In doing this I think the Court is once
"carrying the doctine of avoiding constitutional que
to a wholly unjustifiable extreme."[1] In fact, I thi
Court is actually rewriting § 2, Eleventh to make it
exactly what Congress refused to make it mean.
very legislative history relied on by the Court appe
me to prove that its interpretation of § 2, Eleve
without justification. For that history shows that
gress with its eyes wide open passed that section, kn
that its broad language would permit the use of unio
to advocate causes, doctrines, laws, candidates and p
whether individual members objected or not.[2]

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[1] *Clay* v. *Sun Insurance Office*, 363 U. S. 207, 213 (dis
opinion).

[2] The specific problem of use of the compelled dues for p
purposes was raised during both the hearings and the floor d
Hearings on S. 3295, Subcommittee of the Senate Committee on
and Public Welfare, 81st Cong., 2d Sess., pp. 316–317; Hea
H. R. 7789, House Committee on Interstate and Foreign Com
81st Cong., 2d Sess., p. 160; 96 Cong. Rec. 17049–17050.

Again, in 1958, when Senator Potter introduced his amen
to limit the use of compelled dues to collective bargaining and
purposes, he pointed out on the floor of the Senate that "the
that under current practices in some of our labor organizatio
senters are being denied the freedom not to support financially
cal or ideological or other activities which they may oppose.
Cong. Rec. 11214. It could hardly be contended that the de
his proposal, which was defeated, indicated any generally held
that such use of compelled dues was already proscribed und
Eleventh or any other existing statute. See 104 Cong. Rec.
11224, 11330–11347.

such circumstances I think Congress has a
determination of the constitutionality of th
passed, rather than to have the Court rewrite
in the name of avoiding decision of constitu
tions.

The end result of what the Court is
distort this statute so as to deprive unions
think Congress tried to give them and at the
in the companion case of *Lathrop* v. *Donoh*
today, leave itself free later to hold that int
associations can constitutionally exercise the
denied to labor unions for fear of unconst
The constitutional question raised alike in th
in *Lathrop* is bound to come back here soon w
so meticulously perfect that the Court can
deciding it. Should the Court then hold that
workers can constitutionally be compelled to
support of views they are against, the resu
that the labor unions would have lost their ca
on a statutory-constitutional basis while the
bar would win its case next year or the year
ground that the constitutional part of the b
holding against the unions today was grou
no one has suggested that the Court's statuto
tion of § 2, Eleventh could possibly be supp
out the crutch of its fear of unconstitutionali
why I think the Court's avoidance of the co
issue in both cases today is wholly unfair to
as well as to Congress. I must consider this
basis of my belief as to the constitutionality
enth, interpreted so as to authorize compulsio
to pay dues to a union for use in advocating
political candidates that the protesting
against.

II.

It is contended by the unions that precisely th
First Amendment question presented here was co
and decided in *Railway Employes' Dept.* v. *Hans*
U. S. 225. I agree that it clearly was not. Se
Eleventh was challenged there before it became e
and the main grounds of attack, as our opinion
were that the union-shop agreement would depr
ployees of their freedom of association under th
Amendment and of their property rights under th
There were not in the *Hanson* case, as there are he
gations, proof and findings that union funds re
were being used to support political parties, can
and economic and ideological causes to which th
plaining employees were hostile. Our opinion in
carefully pointed to the fact that only general "
ranged problems" were tendered under the First
ment and that imposition of "assessments . . .
ntane to collective bargaining" would present "a d
problem." The Court went on further to em
that if at another time "the exaction of dues, in
fees, or assessments is used as a cover for forcing ic
cal conformity or other action in contravention
First Amendment, this judgment will not prejud
decision in that case. . . . We only hold that the
ment for financial support of the collective-bar
agency by all who receive the benefits of its
within the power of Congress under the Commerce
and does not violate either the First or the
Amendments." [2]

Thus the *Hanson* case held only that workers c
required to pay their part of the cost of actual bar

[2] 351 U. S., at 235, 236, 238. See also *id.*, at 242 (co
opinion).

carried on by a union selected as bargaining
authority of Congress, just as Congress dou
have required workers to pay the cost of such
had it chosen to have the bargaining carried
Secretary of Labor or any other appropriat
bargaining agent. The *Hanson* case did no
railroad workers could be compelled by la
their constitutionally protected freedom of as
participating as union "members" against
That case cannot, therefore, properly be rea
a principle which would permit government-
ance of some public interest, be that int
or imaginary—to compel membership in Re
fraternal organizations, religious groups, c
commerce, bar associations, labor unions, o
private organizations Government may decid
subsidize, support or control. In a word, the
did not hold that the existence of union-sh
could be used as an excuse to force workers
with people they do not want to associate wi
their money to support causes they detest.

III.

The First Amendment provides:

> "Congress shall make no law respecti
> lishment or religion, or prohibiting the
> thereof; or abridging the freedom of s
> the press; or the right of the people
> assemble, and to petition the Govern
> redress of grievances."

Probably no one would suggest that Congress
out violating this Amendment, pass a law tax
or any persons for that matter (even lawyers
fund to be used in helping certain politica
groups favored by the Government to elect
dates or promote their controversial causes.

ng agent under
doubtless could
such bargaining
rried on by the
riately selected
not hold that
law to forego
f association by
inst their will.
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interest actual
Rotary Clubs,
s, chambers of
s, or any other
ecide it wants to
the *Hanson* case
-shop contracts
kers to associate
with, or to pay
t.

ecting an estab-
the free exercise
of speech, or of
le peaceably to
vernment for a

ress could, with-
taxing workers.
rers), to create a
itical parties or
lect their candi-
es. Compelling



a man by law to pay his money to elect candi
advocate laws or doctrines he is against differs
degree, if at all, from compelling him by law to s
a candidate, a party, or a cause he is against. T
reason for the First Amendment is to make the p
this country free to think, speak, write and wo
they wish, not as the Government commands.

There is, of course, no constitutional reason
union or other private group may not spend its f
political or ideological causes if its members vol
join it and can voluntarily get out of it.[10] Labo
made up of voluntary members free to get in or o
unions when they please have played important a
ful roles in politics and economic affairs.[11] I
spend its money is a question for each voluntar
to decide for itself in the absence of some valid
bidding activities for which the money is spent.
a different situation arises when a federal law
and authorizes such a group to carry on activitie
expense of persons who do not choose to be me
the group as well as those who do. Such a la
though validly passed by Congress, cannot be u
way that abridges the specifically defined freedom
First Amendment. And whether there is such
ment depends not only on how the law is written
on how it works.[13]

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[10] See *DeMille* v. *American Federation of Radio Artists*,
851, 854 (Cal. Dist. Ct. App.), aff'd, 31 Cal. 2d 139, 147-
P. 2d 769, 775–776, cert. denied, 333 U. S. 876.

[11] *United States* v. *C. I. O.*, 335 U. S. 106, 144 (concurring

[12] See, *e. g.*, *Giboney* v. *Empire Storage & Ice Co.*, 336 U

[13] We held in the *Hanson* case, with respect to this very
Eleventh, that even though the statutory provision authoriz
shops is only permissive, that provision, "which expressly
that state law is superseded," is "the source of the power
thority by which any private rights are lost or sacrifi
therefore is "the governmental action on which the Co

There can be no doubt that the federally sanctioned union-shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political, economic and ideological hopes of those whose money has been forced from them under authority of law. This injects federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the First Amendment was particularly intended to prevent. And it makes no difference if, as is urged, political and legislative activities are helpful adjuncts of collective bargaining. Doubtless employers could make the same arguments in favor of compulsory contributions to an association of employers for use in political and economic programs calculated to help collective bargaining on their side. But the argument is equally unappealing whoever makes it. The stark fact is that this Act of Congress is being used as a means to exact money from these employees to help get votes to win elections for parties and candidates and to support doctrines they are against. If this is constitutional the First Amendment is not the charter of political and religious liberty its sponsors believed it to be. James Madison, who wrote the Amendment, said in arguing for religious liberty that "the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in

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operates." 351 U. S., at 232. Even though § 2, Eleventh is permissive in form, Congress was fully aware when enacting it that the almost certain result would be the establishment of union shops throughout the railroad industry. Witness after witness so testified during the hearings on the bill, and this testimony was never seriously disputed. See Hearings on S. 3295, *supra*, note 8, *passim*; Hearings on H. R. 7789, *supra*, note 8, *passim*.

all cases whatsoever." [14] And Thomas Jefferson said that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." [15] These views of Madison and Jefferson authentically represent the philosophy embodied in the safeguards of the First Amendment. That Amendment leaves the Federal Government no power whatever to compel one man to expend his energy, his time or his money to advance the fortunes of candidates he would like to see defeated or to urge ideologies and causes he believes would be hurtful to the country.

The Court holds that § 2, Eleventh denies "unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes." While I do not so construe § 2, Eleventh, I want to make clear that I believe the First Amendment bars use of dues extorted from an employee by law for the promotion of causes, doctrines and laws that unions generally favor to help the unions, as well as any other political purposes. I think workers have as much right to their own views about matters affecting unions as they have to views about other matters in the fields of politics and economics. Indeed, some of their most strongly held views are apt to be precisely on the subject of unions, just as questions of law reform, court procedure, selection of judges and other aspects of the "administration of justice" give rise to some of the deepest and most irreconcilable differences among lawyers. In my view, § 2, Eleventh can constitutionally authorize no more than to make a worker pay dues to a union for the sole purpose of defraying the cost of acting as his bargaining agent. Our Government has no more power to compel individuals to support union programs or union publications than it has to compel the support of political programs, employer

[14] 1 Stokes, Church and State in the United States 391 (1950).

[15] Brant, James Madison: the Nationalist 354 (1948).

programs or church programs. And the First Amendment, fairly construed, deprives the Government of all power to make any person pay out one single penny against his will to be used in any way to advocate doctrines or views he is against, whether economic, scientific, political, religious or any other.[16]

I would therefore hold that § 2, Eleventh of the Railway Labor Act, in authorizing application of the union-shop contract to the named protesting employees who are appellees here, violates the freedom of speech guarantee of the First Amendment.

IV.

The remedy:

The Georgia court enjoined the unions and the railroads from certain future activities under the contract and also required repayment of dues paid by three employees who had protested use of union funds to support candidates or advocate views the protesting employees were against.

I am not so sure as the Court that the injunction bars "the collection of all funds from anyone who can show that he is opposed to the expenditure of any of his money for political purposes which he disapproves." So construed the injunction would take away the First Amendment right of employees to contribute their money voluntarily to a collective fund to be used to support and oppose candidates and causes even though individual contributors might disagree with particular choices of the group. So far as it may be ambiguous in this respect, I think the injunction should be modified to make sure that it does not interfere with the valuable rights of citizens to make their individual voices heard through voluntary collective action.

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[16] Cf. *Everson* v. *Board of Education*, 330 U. S. 1, 16.

For much the same basic reasons I think the injunction is too broad in that it runs not only in favor of the six protesting employees but also in favor of the "class they represent." No one of that "class" is shown to have protested at all. The State Supreme Court nevertheless rejected the unions' contention that the so-called class was so indefinite, and its members so lacking in common, identifiable interests and mental attitudes, that a decree purporting to bind all of them, the railroads, the individual defendants and the unions, would not comport with the due process requirements of the Fifth and Fourteenth Amendments. For reasons to be stated, I agree with this contention of the unions and consequently would hold that the judgment here cannot stand insofar as it purports finally to adjudicate rights as between the party defendants and railroad employees who were neither named party plaintiffs nor intervenors in the suit.

The trial court defined the "class" as composed of "all non-operating employees of the railroad defendants affected by, and opposed to, the . . . union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs . . . ." [17] As applied to the facts here, this class, as defined, could include employees not only

[17] The trial court went on to include in the class other employees who opposed the use of union funds for any purposes "other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms, or other conditions of employment or the handling of disputes relating to the above." I read the two opinions of the Georgia Supreme Court, however, as limiting its holding to the precise question of whether the First Amendment is violated by the compulsory legal requirement that employees pay dues and other fees which are partly used to propagate political and ideological views obnoxious to the employees. I consequently do not reach or consider the different question lurking in this part of the trial court's definition of class.

from Georgia, but also from Florida, Alabama, North Carolina, South Carolina, Tennessee, Louisiana, Illinois, Virginia, Ohio, Indiana, Missouri, Mississippi, Kentucky and the District of Columbia. Genuine class actions result in binding judgments either for or against each member of the class.[18] Obviously, to make a judgment binding, the parties for or against whom it is to operate must be identifiable when the judgment is rendered. That would not be possible here since the only employees included in the class would be those who personally oppose the views they allege the union is using their dues to promote. This would make the "class" depend on the views entertained by each member, views which may change from day to day or year to year. Under these circumstances, when this decree was rendered neither the court nor the adverse parties nor anyone else could know with certainty, to what individuals the unions owed a duty under the decree. In *Hansberry* v. *Lee*, 311 U. S. 32, 44, this Court pointed out the insuperable obstacles in attempting to treat as members of the same class parties to a contract such as the one here, some of whom might prefer to have the contract enforced and some of whom might not. Notice to persons whose rights are to be adjudicated is too important an element of our system of justice to permit a holding that this Georgia action has finally determined the issues for all the unidentifiable members of this "class" of plaintiffs spread territorially all the way from Florida to Illinois and from the District of Columbia to Missouri. After all the class suit doctrine is only a narrow judicially created exception to the rule that a case or controversy involves litigants who have been duly notified and given an opportunity to be

[18] See, *e. g.*, *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U. S. 356, 367.

present in court either in person or by counsel.[19] I would hold that there was no known common interest among the members of the described class here which justified this class action. From the very nature of the rights asserted, which depended on the unknown, perhaps fluctuating mental attitudes of employees, the rights of each employee were the basis for separable claims, in which the relief for each might vary as it did here as to the amount of damages awarded. Under these circumstances the class judgment should not stand.

The decree, modified to eliminate its class aspect, does not unconditionally forbid the application of the contract to all people under all circumstances, as did the one we struck down in the *Hanson* case. The decree so modified would simply forbid use of the union-shop contract to bar employment of the six protesting employees so long as the unions do not discontinue the practice of spending union funds to support any causes or doctrines, political, economic or other, over the expressed objection of the six particular employees. Other employees who have not protested are of course in the entirely different position of voluntary or acquiescing dues payers, which they have every right to be, and since they have asked for no relief the decree in this case should not affect them. Thus modified I think the relief afforded by the decree is justified.

The decree requires the union to refund dues, fees and assessments paid under protest by three of the complaining employees and exempts the six complaining employees from the payment of any union dues, fees or assessments so long as funds so received are used by the union to promote causes they are against. The state court found that these payments had been and would be made by these employees only because they had been compelled to join

[19] Cf. *Hansberry* v. *Lee*, 311 U. S., at 41–42.

the union to save their jobs, despite their objecti
paying the union so long as it used its funds for cand
parties and ideologies contrary to these employees' v
The Court does not challenge this finding but nev
less holds that relieving protesting workers of all pa
of dues would somehow interfere with the union's
tory duty to act as a bargaining agent. In the first
this would interfere with the union's activities o
the extent that it bars compulsion of dues payment
protesting workers to be used in some unknown p
unconstitutional purposes, and I think it perfectly
to hold that such payments cannot be compelled.
thermore, I think the remedy suggested by the Cou
work a far greater interference with the union's ba
ing activities because it will impose much greate
and accounting burdens on both unions and w
The Court's remedy is to give the wronged emplo
right to a refund limited either to "the proportion
union's total expenditures made for such political
ities" or to the "proportion . . . [of] expenditu
political purposes which he had advised the union
approved." It may be that courts and lawyers wi
ficient skill in accounting, algebra, geometry, trig
etry and calculus will be able to extract the proper
scopic answer from the voluminous and complex ac
ing records of the local, national and international
involved. It seems to me, however, that whi
Court's remedy may prove very lucrative to specia
ters, accountants and lawyers, this formula, wi
attendant trial burdens, promises little hope for fi
recompense to the individual workers whose First A
ment freedoms have been flagrantly violated. Un
edly, at the conclusion of this long exploration of ac
ing intricacies, many courts could with plausibility c
the workers' claims as *de minimis* when measured
dollars and cents.

I cannot agree to treat so lightly the value of a man's constitutional right to be wholly free from any sort of governmental compulsion in the expression of opinions. It should not be forgotten that many men have left their native lands, languished in prison, and even lost their lives, rather than give support to ideas they were conscientiously against. The three workers who paid under protest here were forced under authority of a federal statute to pay *all* current dues or lose their jobs. They should get back *all* they paid with interest.

Unions composed of a voluntary membership, like all other voluntary groups, should be free in this country to fight in the public forum to advance their own causes, to promote their choice of candidates and parties and to work for the doctrines or the laws they favor. But to the extent that Government steps in to force people to help espouse the particular causes of a group, that group—whether composed of railroad workers or lawyers—loses its status as a voluntary group. The reason our Constitution endowed individuals with freedom to think and speak and advocate was to free people from the blighting effect of either a partial or a complete governmental monopoly of ideas. Labor unions have been peculiar beneficiaries of that salutary constitutional principle, and lawyers, I think, are charged with a peculiar responsibility to preserve and protect this principle of constitutional freedom, even for themselves. A violation of it, however small, is, in my judgment, prohibited by the First Amendment and should be stopped dead in its tracks on its first appearance. With so vital a principle at stake, I cannot agree to the imposition of parsimonious limitations on the kind of decree the courts below can fashion in their efforts to afford effective protection to these priceless constitutional rights.

I would affirm the judgment of the Georgia Supreme Court, with the modifications I have suggested.

# SUPREME COURT OF THE UNITED STA

No 4.—October Term, 1960.

International Association of Machinists, et al., Appellants, v. S. B. Street, et al. } On Appeal From the preme Court of Geor

[June 19, 1961.]

Mr. Justice Frankfurter, whom Mr. Justice H LAN joins, dissenting.

Appellant unions were the collective bargaining resentatives of the "non-operating" employees of Southern Railway. Appellees, six individual rail employees, commenced this action in the Superior C of Bibb County, Georgia, seeking a declaration invalidity and an injunction to prevent enforcemen a union shop agreement, made under the authorit § 2, Eleventh of the Railway Labor Act, as amende 1951, on the ground that the contract was in violatio Georgia law and rights secured by the First, Fifth, Ni and Tenth Amendments of the United States Const tion. The suit was brought as a class action on beha "all those employees or former employees of the rail defendants affected by and opposed to the union-s agreement who are also opposed to the use of the peri dues, fees and assessments which they have been, and will be required to pay to support ideological political doctrines and candidates and legislative grams. . . ." The monthly dues ranged from $2.2 $3. The petition alleged that the plaintiffs opposed were unwilling voluntarily to support the "ideolo and political doctrines and candidates" for which u dues and assessments were collected under the u

shop agreement and would be u.ed "in part . . . to support."

The Georgia trial court's decision dismissin plaint for failure to state a cause of action w by the Supreme Court of Georgia. 213 Ga. 2 2d 101. Upon remand, the parties stipulated allegations, and the plaintiffs offered proof of of union funds which went to the legislativ and educational departments of the unions a trolling organs of the AFL–CIO. The trial c *inter alia*, the following findings: the unions been expended in "substantial amounts" t political doctrines and legislative programs plaintiffs opposed; these funds had been use stantial amounts to impose upon plaintiff formity to those doctrines"; such use of fund reasonably necessary to collective bargaining taining the existence and position of said union as effective bargaining agents." The need o engage in what are loosely described as politica as means of promoting—if not to achieving poses of their existence, the extent to which t has become an essential part of the American l ment and more particularly of railroad labor relation of these means to the ends of collecti ing, were matters not canvassed at trial no noticed. Nor was it claimed that the slightest been interposed against the fullest exercise by tiffs of their freedom of speech in any form forum. Since these matters were not canvass ings upon them were made.

The trial court permanently enjoined enfo the agreement so long as the unions continue "in the improper and unlawful activities desc declared § 2, Eleventh of the Railway Labor stitutional insofar as it permitted the exacti

utilized in promoting so-called political activiti
union members disapproving such expenditure
unions were also ordered to repay the dues and
ments previously paid by the individual plaintiff
Georgia Supreme Court affirmed this judgment,
27, 108 S. E. 2d 796, and on appeal to this Court
28 U. S. C. § 1257 (1), probable jurisdiction was
361 U. S. 807.

I completely defer to the guiding principle th
Court will abstain from entertaining a serious co
tional question when a statute may fairly be co
so as to avoid the issue, but am unable to acc
restrictive interpretation that the Court gives
Eleventh of the Railway Labor Act. After
the relevant canon for constitutional adjudicatio
*United States* v. *Jin Fuey Moy*, 241 U. S. 39
Mr. Justice Cardozo for the whole Court enuncia
complementary principle:

> "But avoidance of a difficulty will not be pre
> the point of disingenuous evasion. Here the
> tion of the Congress is revealed too distin
> permit us to ignore it because of mere mis
> as to power. The problem must be fac
> answered." *Moore Ice Cream Co.* v. *Rose*, 2
> 373, 379.

The Court-devised precept against avoidable confli
Congress through unnecessary constitutional adjud
is not a requirement to distort an enactment i
to escape such adjudication. Respect for the d
demands and only permits that we extract an inte
tion which shies off constitutional controversy *p*

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[1] "A statute must be construed, if fairly possible, so as to
only the conclusion that it is unconstitutional but also grav
upon that score."

such interpretation is consonant with a fair
statute.

And so the question before us is whether
of the Railway Labor Act can untorturing
bar activities of railway unions, which have
accordance with federal law for a union sh
they are forbidden to spend union dues for
have uniformly and extensively been so lon
to have become commonplace, settled, conve
union practices. No consideration relevant
tion sustains such a restrictive reading.

The statutory provision cannot be mean
strued except against the background and p
of what is loosely called political activity
trade unions in general and railroad unions in
activity indissolubly relating to the immedi
and social concerns that are the *raison d'êt*
It would be pedantic heavily to document
truth of industrial history and commonpl
union life. To write the history of the
the United Mineworkers, the Steel Worke
gamated Clothingworkers, the Internationa
ment Workers, the United Auto Workers,
their so-called political activities and exp
them, would be sheer mutilation. Suffice
few illustrative manifestations. The AFL
conservative labor group, sponsored as earl
extensive program of political demands cal
pulsory education, an eight-hour day, empl
bility, and other social reforms.[2] The fierc
Adamson Law of 1916, see *Wilson* v. *Ne*
332, was a direct result of railway uni
exerted upon both the Congress and th

[2] Taft, The A. F. of L. in the Time of Gompers,
[3] Perlman and Taft, History of Labor in the Unit
1932, pp. 380–385.

fair reading of a

ner § 2, Eleventh
ingly be read to
ave bargained in
n shop, whereby
for purposes that
long pursued as
nventional trade-
vant to construc-

eaningfully con-
d presupposition
ity of American
ns in particular—
nediate economic
*d'être* of unions.
ent this familiar
nplace of trade-
ne Brotherhoods,
rkers, the Amal-
onal Ladies Gar-
rs, and leave out
expenditures for
ice it to recall a
AFL, surely the
early as 1893 an
calling for com-
mployer tort lia-
iercely contested
*New*, 243 U. S.
union pressures
the President.[3]

ers, p. 71.
United States, 1896-



More specifically, the weekly publication "Labor
expenditure under attack in this case—has since 191
the organ of the railroad brotherhoods which finar
Its files through the years show its preoccupation wit
islative measures that touch the vitals of labor's int
and with the men and parties who effectuate them.
aspect—call it the political side—is as organic, as i
a part of the philosophy and practice of railway uni
their immediate bread-and-butter concerns.

Viewed in this light, there is a total absence in the
the context, the history and the purpose of the legis
under revi w of any indication that Congress, in aut
ing union-shop agreements, attributed to unions
restricted them to an artificial, non-prevalent sco
activities in the expenditure of their funds. An infe
that Congress legislated regarding expenditure c
in contradiction to prevailing practices ought to be
founded than on complete silence. The aim of the
legislation, clearly stated in the congressional re
was to eliminate "free riders" in the industry[4]—to
possible "the sharing of the burden of maintenan
all the beneficiaries of union activity."[5] To sugges
this language covertly meant to encompass any less
the maintenance of those activities normally engag
by unions is to withdraw life from law and to say
Congress dealt with artificialities and not with ra
unions as they were and as they functioned.

The debates and hearings lend not the slightest su
to a construction of the amendment which would re
the uses to which union funds had, at the time
union-shop amendment, been conventionally put.
sure, the legislative record does not spell out the ob
The absence of any showing of concern about union

[4] S. Rep. No. 2262, 81st Cong., 2d Sess. 2–3.

[5] Remarks of Mr. Harrison, Hearings, House Committee on
State and Foreign Commerce, 81st Cong., 2d Sess., p. 253.

penditures in "political" areas—especially when the issue was briefly raised[6]—only buttresses the conclusion that Congress intended to leave unions free to do that which unions had been and were doing. It is surely fanciful to conclude that this verbal vacuity implies that Congress meant its amendment to be read as providing that members of the union may restrict their dues solely for financing the technical process of collective bargaining.

There were specific safeguards protective of minority rights. These safeguards were directed solely toward the protection of those who might otherwise find themselves barred from union membership—*viz.*, Negroes and those who had been long-time opponents of the unions. The only reference to free speech in the record of the enactment was made by the President of the Norfolk & Western Railroad Company during the hearings before the House Subcommittee. His remarks were related to restrictive provisions in some union constitutions which suppressed the right of a dissatisfied member to voice his criticism upon pain of expulsion.[7] No such claim is remotely before us.[8] The sole reason for clarifying the proviso to the amendment so that payment of dues was explicitly declared to be the only legitimate condition of union membership was the continuing fear of lack of protection for unpopular minorities. There is no mention of political expenditures in any of the references. From this wasteland of material it is strange to find not only that "A congressional concern over possible impinge-

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[6] 96 Cong. Rec. 17049–17050; Hearings, Subcommittee of the Senate Committee on Labor and Public Welfare on S. 3295, 81st Cong., 2d Sess., pp. 173–174.

[7] Remarks of Mr. Smith, Hearings, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., pp. 115–116.

[8] Compare *Railway Employes' Dept.* v. *Hanson*, 351 U. S. 225, 236–237, n. 8.

ments on the interests of individual dissenters from union policies is therefore discernible," but so discernible that a construction must be placed upon the statute that neither its terms nor the accustomed habits of union life remotely justify.

None of the parties in interest at any time suggested the possibility that the statute be construed in the manner now suggested. Neither the United States, the individual dissident members, the railroad unions, the railroads, the AFL–CIO, the Railway Labor Executives' Association, nor any other *amici curiae*, not one suggested that the statute could be emasculated in the manner now proposed. Of course we are not confined by the absence of such a claim, but it is significant that a construction now found to be reasonable never occurred to the litigants in the two arguments here.

I cannot attribute to Congress that *sub silentio* it meant to bar railway unions under union-shop agreement from expending their funds in their traditional manner. How easy it would have been to give at least a hint that such was its purpose. The claim that these expenditures infringe the appellees' constitutional rights under the First Amendment must therefore be faced.

In *Railway Employes' Dept.* v. *Hanson*, 351 U. S. 225, this Court had to pass on the validity of § 2, Eleventh of the Railway Labor Act, which provided that union-shop agreements entered into between a carrier and a duly designated labor organization shall be valid notwithstanding any other "statute or law of the United States, or Territory thereof, or of any State."[9] We held that in

[9] The pertinent portion of the section follows:

"Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and

its exercise of the power to regulate commerce, "the choice by the Congress of the union shop as a stabilizing force [in industrial disputes] seems to us to be an allowable one," and that the plaintiffs' claims under the First and Fifth Amendments were without merit.

The record before the Court in *Hanson* clearly indicated that dues would be used to further what are normally described as political and legislative ends. And it surely can be said that the Court was not ignorant of a fact that everyone else knew. Union constitutions were in evidence which authorized the use of union funds for political magazines, for support of lobbying groups, and for urging union members to vote for union-approved candidates.[10] The contention now raised by plaintiffs was succinctly stated by the *Hanson* plaintiffs in their brief.[11] We indicated that we were deciding the merits of the complaint on all the allegations and proof before us. "On the present record, there is no more an infringe-

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authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership." 64 Stat. 1238, 45 U. S. C. § 152, Eleventh.

[10] See the provisions of the constitutions of the Brotherhood of Maintenance of Way Employees, the Brotherhood of Railway Carmen of America, and the International Association of Machinists before the Court in the *Hanson* record, pp. 103–143.

[11] Appellee's brief, pp. 16–17, 65.

ment or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." 351 U. S., at 238.

One would suppose that *Hanson's* reasoning disposed of the present suit. The Georgia Supreme Court, however, in reversing the initial dismissal of the action by the lower court, relied upon the following reservation in our opinion: "If the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case." 351 U. S., at 238. The use of union dues to promote relevant and effective means of realizing the purposes for which unions exist does not constitute a utilization of dues "as a cover for forcing ideological conformity" in any fair reading of those words. It will come as startling and fanciful news to the railroad unions and the whole labor movement that in using union funds for promoting and opposing legislative measures of concern to their members they were engaged in under-cover operations. "Cover" implies a disguise, some sham; "forcing . . . conformity" means coercing avowal of a belief not entertained. Plaintiffs here are in no way subjected to such suppression of their true beliefs or sponsorship of views they do not hold. Nor are they forced to join a sham organization which does not participate in collective bargaining functions, but only serves as a conduit of funds for ideological propaganda. A totally different problem than the one bofere the Court would be presented by provisions of union constitutions which in fact prohibited members from sponsoring views which the union opposed,[12] or which enabled officers to sponsor views not representative of the union.

[12] "B. The Grand Lodge Constitution of the Brotherhood Railway Carmen of America prohibits members from 'interfering with

Nevertheless, we unanimously held that the plaint in *Hanson* had not been denied any right protected by First Amendment. Despite our holding, the gist of complaint here is that the expenditure of a portion mandatory funds for political objectives denies f speech—the right to speak or to remain silent—to me bers who oppose, against the constituted authority union desires, this use of their union dues. No one's des or power to speak his mind is checked or curbed. T individual member may express his views in any pub or private forum as freely as he could before the uni collected his dues. Federal taxes also may diminish vigor with which a citizen can give partisan support t political belief, but as yet no one would place such impediment to making one's views effective within reach of constitutionally protected "free speech."

This is too fine-spun a claim for constitutional rec nition. The framers of the Bill of Rights lived in era when overhanging threats to conduct deemed "se tious" and *lettres de cachet* were current issues. Th concern was in protecting the right of the individ freely to express himself—especially his political beliefs in a public forum, untrammeled by fear of punishme or of governmental censure.

But were we to assume, *arguendo*, that the plaint have alleged a valid constitutional objection if C gress had specifically ordered the result, we must c sider the difference between such compulsion and absence of compulsion when Congress acts as plato cally as it did, in a wholly non-coercive way. Congr has not commanded that the railroads shall employ o those workers who are members of authorized unio

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legislative matters affecting national, state, territorial, dominion provincial legislation, adversely affecting the interests of our membe § 64.", 351 U. S., at 237, n. 8.

Congress has only given leave to a bargaining representative, democratically elected by a majority of workers, to enter into a particular contractual provision arrived at under the give-and-take of duly safeguarded bargaining procedures. (The statute forbids distortion of these procedures as, for instance, through racial discrimination. *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192.) Congress itself emphasized this vital distinction between authorization and compulsion. S. Rep. No. 2262, 81st Cong., 2d Sess. 2. And this Court in *Hanson* noted that "The union shop provision of the Railway Labor Act is only permissive. Congress has not . . . required carriers and employees to enter into union shop agreements." 351 U. S., at 231. When we speak of the Government "acting" in permitting the union shop, the scope and force of what Congress has done must be heeded. There is not a trace of compulsion involved—no exercise of restriction by Congress on the freedom of the carriers and unions. On the contrary, Congress expanded their freedom of action. Congress lifted limitations upon free action by parties bargaining at arms length.[13]

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[13] To ignore this distinction would be to go far beyond the severely criticized, indeed rather discredited, case of *United States* v. *Butler*, 297 U. S. 1, which found coercive implications in the processing tax of the Agricultural Adjustment Act. The dissenting views of Mr. Justice Stone, concurred in by Brandeis and Cardozo JJ., may surely be said to have won the day: "Although the farmer is placed under no legal compulsion to reduce acreage, it is said that the mere offer of compensation for so doing is a species of economic coercion which operates with the same legal force and effect as though the curtailment were made mandatory by Act of Congress." 297 U. S., at 81.

For an analysis of the 1951 Amendment leading to a narrow scope of its constitutional implications, see Wellington, The Constitution, the Labor Union, and "Governmental Action," 70 Yale L. J. 345, 352–360, 363–371.

The plaintiffs have not been deprived of the
participate in determining union policies or to as
respective weight in defining the purposes for wh
dues may be expended. Responsive to the actu
our industrial society, in which unions as such
role that they do, the law regards a union as a
tained, legal personality exercising rights and s
responsibilities wholly distinct from its individu
bers. See *United Mine Workers of America* v.
*Coal Co.*, 259 U. S. 344. It is a commonpla
organizations that a minority of a legally r
group may at times see an organization's fu
for promotion of ideas opposed by the minori
analogies are numerous. On the largest scale,
eral Government expends revenue collected fr
vidual taxpayers to propagandize ideas which m
payers oppose. Or, as this Court noted in *Hans*
state laws compel membership in the integrate
a prerequisite to practicing law,[14] and the bar as

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[14] The following States have integrated bars: Alabama
Tit. 46, § 30); Alaska (Alaska Laws Ann. § 35-2-77
(Ariz. Code Ann. § 32-302); California (Cal. Bus. &
§ 6002); Florida (Fla. Stat. Ann., Vol. 31, pp. 699-713 (co
Idaho (Idaho Code § 3-408 to 3-417); Kentucky (Ky.
§ 30.170); Louisiana (La. Rev. Stat. 37:211; La. Supr
Rule XXI); Michigan (Mich. Stat. Ann. § 27-101);
(Miss. Code § 8696); Missouri (Mo. Supreme Court R
Mo. xxxi); Nebraska (Neb. Supreme Court Rule IV
283, 275 N. W. 265); Nevada (Nev. Rev. Stat. 7.270-7.
Mexico (N. Mex. Stat. Ann. § 18-1-2 to 18-1-24); Nort
(N. C. Gen. Stat. § 84-16); North Dakota (N. D.
§ 27-1202); Oklahoma (*In re Integration of the Bar of*
185 Okla. 505, 95 P. 2d 113, amended by Okla. Supreme
approved October 6, 1958); Oregon (Ore. Rev. Stat. 9.0
South Dakota (S. D. Code 32.1114); Texas (Vern. Civ.
320a-1, § 3); Utah (Utah Code Ann. 78-51-1 to 78-51-25
(Va Code 54-49); Washington (Wash. Rev. Code 2.48.0

uses its funds to urge legislation of which individ
members often disapprove. The present case is, as
Court in *Hanson* asserted, indistinguishable from
issues raised by those who find constitutional difficult
with the integrated bar.[15] If our statement in *Hans*
carried any meaning, it was an unqualified recogniti
that legislation providing for an integrated bar, exerc
ing familiar functions, is subject to no infirmity deriv
from the First Amendment. Again, under the Secu
ties Exchange Act, Congress specifically authorized
formation of "national securities associations," me
bership in which is of practical necessity to many brok
and dealers.[16] The Association has urged the passage

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Virginia (W. Va. Code Ann. 51-1-4a); Wisconsin (Wis. Stat. 256
5 Wis. 2d 618, 627, 93 N. W. 2d 601, 605); Wyoming (Wyo. S
5-22; Wyo. Supreme Court Rules for State Bar, Rule 5).

[15] So far as reported, all decisions have upheld the integrated
against constitutional attack. *Carpenter* v. *State Bar of Califor*
211 Cal. 358, 295 P. 23; *Herron* v. *State Bar of California*, 24
2d 53, 147 P. 2d 543; *Petition of Florida State Bar Assn.*, 40 So.
902; *In re Mundy*, 202 La. 41, 11 So. 2d 398; *Ayres* v. *Hadaw*
303 Mich. 589, 6 N. W. 2d 905; *In re Scott*, 53 Nev. 24, 292 P. 2
*In re Platz*, 60 Nev. 24, 108 P. 2d 858; *In re Gibson*, 35 N. Mex. 5
4 P. 2d 643; *Kelley* v. *State Bar of Oklahoma*, 148 Okla. 282,
P. 623; *Lathrop* v. *Donohue*, 10 Wis. 2d 230.

[16] The Maloney Act of 1938 added § 15A to the Securities Exchan
Act of 1934. 52 Stat. 1070, 15 U. S. C. § 78*o*-3. In order to
registered, a number of statutory standards must be met. T
statute specifically requires that an association's rules provide
democratic representation of the membership, and that dues
equitably allocated. See § 15A (b)(5), (6). Only one associati
the National Association of Securities Dealers, Inc., has ever appl
for or been granted registration. NASD membership compri
roughly three-quarters of all brokers and dealers registered with
Securities Exchange Commission. Loss, Securities Regulation 766-
(1951, Supp. 1955). Section 15A (i), (n) of the Act authorize
NASD to formulate rules which stipulate that members shall ref

several legislative reforms [17] which one can assume did not represent the convictions of To come closer to the heart of the immedia the union's choice of when to picket or to go unconstitutional? Picketing is still deemed of speech,[18] but surely the union's decision to its statutory aegis as a bargaining unit is not tutional compulsion forced upon members oppose a strike, as minorities not infre Indeed, legislative reform intended to ins representation of the minority workers in in politics [19] would be redundant if, despite all the union were constitutionally forbidden minority opposition to spend money in acc the majority's desires.

How unrealistic the views of plaintiffs manifest in light of the purpose of the legisl in authorizing the union shop and the pra sity for unions to participate in what as

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to deal with non-members with immunity from the See S. Rep. No. 1455, 75th Cong., 3d Sess. 8–9 (1938 *supra*, 769–770. The Commission has stated that impossible for a dealer who is not a member of participate in a distribution of important size." *Natio of Securities Dealers, Inc.*, 19 S. E. C. 424, 441.

[17] In 1949 Senator Frear introduced a bill which wou expanded the applicability of the registration, pro trading provisions of the Securities Exchange Act to tions. S. 2408, 81st Cong., 1st Sess. The NASD passage of the proposed legislation, and testified on it the Senate subcommittee. Hearings Before Subcomm Committee on Banking and Currency on S. 2408, Sess. 53–62 (1950); Loss, *op. cit., supra*, 620, 621.

[18] To this extent *Thornhill* v. *Alabama*, 310 U. S. 8 survived and was applied in *Chauffeurs Union* v. *Ne* 341.

[19] See Cox, Internal Affairs of Labor Unions Un Reform Act of 1959, 58 Mich. L. Rev. 819, 829–851.

analytical fragmentation may be called politica
ities. The 1951 Amendment of the Railway Lab
which enacted § 2, Eleventh, was passed in an e
make more equitable the sharing of costs of co
bargaining among all the workers whom the bar
agent represented. H. R. Rep. No. 2811, 81st
2d Sess. 4; Hearings, House Committee on Interst
Foreign Commerce on H. R. 7789, 81st Cong., 2
10, 11, 29, 49–50; Hearings, Subcommittee of the
Committee on Labor and Public Welfare on S. 329
Cong., 2d Sess. 15–16, 130, 154, 170. Prior to the
of this Amendment, there was no way in which the
could compel non-union members in the bargainin
to contribute to the expenses incurred in seekin
tractual provisions from the carrier that would r
to the advantage of all its employees. The main
why prior law had forbidden union shops in the r
industry is stated in the Senate Report to th
Amendment:

> "The present prohibitions against all fo
> union security agreements and the check-o
> made part of the Railway Labor Act in 1934.
> were enacted into law against the backgro
> employer use of these agreements as devices fo
> lishing and maintaining company unions, thu
> tively depriving a substantial number of em
> of their right to bargain collectively. It is est
> that in 1934 there were over 700 agreements b
> the carriers and unions alleged to be company
> These agreements represented over 20 per cen
> total number of agreements in the industry.
>
> "It was because of this situation that labor
> zations agreed to the present statutory prohi
> against union security agreements. An effo
> made to limit the prohibition to company
> This, however, proved unsuccessful; and in o

reach the problem of company co
labor organizations accepted the
hibitions which also deprived the
tions of seeking union security
check-off provisions. . . .

"Since the enactment of the
company unions have practica
S. Rep. No. 2262, 81st Cong., 2d S
H. R. Rep. No. 2811, 81st Cong.,

Nothing was further from congressi
to be concerned with restrictions u
speak. Its purpose was to eliminat
the bargaining unit. Inroads on fre
remotely involved in the legislative pr
in nobody's mind. Congress legislated
found to be abuses in the domain of pr
peace. This Court would stray beyon
it to erect a far-fetched claim, derived f
relation between an obviously valid ain
an abstract conception of freedom, in
right.

For us to hold that these defendan
expend their moneys for political and l
would be completely to ignore the lon
conduct and its pervasive acceptance i
American labor's initial role in shapin
back 130 years.[20] With the coming o
labor on a national scale was commit
class party but to maintain a program
in furtherance of its industrial standar
unions were supporting members of t

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[20] 1 Commons, History of Labor in the U
(1935).

[21] Taft, The A. F. of L. in the Time of Gom
Bakke and Kerr, Unions, Management and t

trol over unions,
nore general pro-
ational organiza-
agreements and

)34 amendments,
ly disappeared."
ss. 2–3. See also
d Sess. 3.

nal purpose than
on the right to
"free riders" in
speech were not
cess. They were
to correct what it
noting industrial
l its powers were
om some ultimate
of legislation and
a constitutional

unions may not
gislative purposes
history of union
our political life.
legislation dates
the AFL in 1886,
d not to act as a
of political action
s.[21] British trade
e House of Com-

ited States, 318–325

ers, 289–292 (1957);
Public, 215 (1948).



mons as early as 1867.[22] The Canadian Trades C
in 1894 debated whether political action should
main objective of the labor force.[23] And in a
Australian case, the High Court upheld the rig
union to expel a member who refused to pay a
levy.[24] That Britain, Canada and Australia h
explicit First Amendment is beside the point.
thing; the freedoms safeguarded in terms in th
Amendment are deeply rooted and respected in the
tradition, and are part of legal presuppositions in
and Australia. And in relation to our immedia
cern, the British Commonwealth experience est
the pertinence of political means for realizing bas
union interests.

The expenditures revealed by the AFL–CIO Ex
Council Reports emphasize that labor's particip
urging legislation and candidacies is a major one.
last three fiscal years, the Committee on Political
tion (COPE) expended a total of $1,681,990
AFL–CIO News cost $756,591.99; the Legislative
ment reported total expenses of $741,918.24.[25]
Georgia trial court has found that these func
not reasonably related to the unions' role as
tive bargaining agents. One could scarcely call
finding of fact by which this Court is bound, or e
of law. It is a baseless dogmatic assertion that flie
face of fact. It rests on a mere listing of unions' e
tures and an exhibit of labor publications. The

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[22] 3 Cole, A Short History of the British Working Class M
56 (2d ed. 1937).

[23] Logan, Trade Unions in Canada, 59–60 (1948).

[24] *William* v. *Hursey*, 33 A. L. J. R. 269 (1959).

[25] These are the totals of the figures for 1957, 1958, a
reported in Proceedings of the AFL–CIO Constitutional Co
Vol. II, pp. 17–19 (1959) and *id.*, pp. 17–19 (1957).

of the Adamson Act [26] in 1916, establishing the eight-hour day for the railroad industry, affords positive proof that labor may achieve its desired result through legislation after bargaining techniques fail. See *Wilson* v. *New*, *supra*, at 340–343. If higher wages and shorter hours are prime ends of a union in bargaining collectively, these goals may often be more effectively achieved by lobbying and the support of sympathetic candidates. In 1960 there were at least eighteen railway labor organizations registered as congressional lobby groups.[27]

When one runs down the detailed list of national and international problems on which the AFL–CIO speaks, it seems rather naive for a court to conclude—as did the trial court—that the union expenditures were "not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents." The notion that economic and political concerns are separable is pre-Victorian. Presidents of the United States and Committees of Congress invite views of labor on matters not immediately concerned with wages, hours, and conditions of employment.[28] And this Court accepts briefs as *amici* from the AFL–CIO on issues that cannot be called industrial, in any circumscribed sense. It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance.[29] Neither is it true for labor. It dis-

[26] 39 Stat. 721, 45 U. S. C. §§ 65–66.

[27] Letters from Clerk of House of Representatives to Supreme Court Librarian, May 5, 1960; May 10, 1961.

[28] For a recent example, see the statement of Stanley H. Ruttenberg, Director of Research for the AFL–CIO, on pending tax legislation before the House Ways and Means Committee, reported in part in the New York Times, May 12, 1961, p. 14, col. 3.

[29] A contested question in the corporate field is the legitimacy of corporate charitable contributions. This presents a not dissimilar problem whether the Government may authorize an organization to

respects the wise, hardheaded men who were the authors of our Constitutions and our Bill of Rights to conclude that their scheme of government requires what the facts of life reject. As Mr. Justice Rutledge stated: "To say that labor unions as such have nothing of value to contribute to that process [the electoral process] and no vital or legitimate interest in it is to ignore the obvious facts of political and economic life and of their increasing interrelationship in modern society." *United States* v. *CIO*, 335 U. S. 106, 129, 144 (concurring opinion joined in by Black, Douglas, and Murphy, JJ). Fifty years ago this Court held that there was no connection between outlawry of "yellow dog contracts" on interstate railroads and interstate commerce, and therefore found unconstitutional legislation directed against the evils of these agreements. Is it any more consonant with the facts of life today, than was this holding in *Adair* v. *United States*, 208 U. S. 161, to say that the tax policies of the National Government—the scheme of rates and exemptions—have no close relation to the wages of workers; that legislative developments like the Tennessee Valley Authority do not intimately touch the lives of workers within their respective regions; that national measures furthering health and education do not directly bear on the lives of industrial workers; that candidates who support these movements do not stand in different relation to labor's narrowest economic interests than avowed opponents of these measures? Is it respectful of the modes

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expend money for a purpose outside the corporate business to which an individual stockholder is opposed. A shareholder who joined prior to the authorization and who therefore cannot be said to have impliedly consented surely is as directly affected as is the member of a union shop. See *A. P. Smith Mfg. Co.* v. *Barlow*, 13 N. J. 145, 98 A. 2d 581, which upheld against federal constitutional attack a state statute which authorized New Jersey corporations to make contributions to charity. The amounts involved were substantial.

of thought of Madison and Jefferson projected
our day to attribute to them the view that the
Amendment must be construed to bar unions from
cluding, by due procedural steps, that civil-rights
lation conduces to their interest, thereby prohib
union funds to be expended to promote passage of
measures? [30]

Congress was not unaware that railroad unions
use these mandatory contributions for furthering
economic interests through political channels. S
Cong. Rec. 17049–17050. That such consequences
authorizing compulsory union membership were
foreseen had been indicated to committees of Congres
than four years earlier when the union shop provisio
the Taft-Hartley Act were being debated. Hearings
ate Committee on Labor and Public Welfare on S. 55,
Cong., 1st Sess., pp. 726, 1452, 1455–1456, 1687,
2146, 2150; Hearings, House Committee on Educ
and Labor on H. R. 8, 80th Cong., 1st Sess., pp. 350,
The failure of the Railway Labor Act amendmen
exempt the member who did not choose to have his
tributions put to such uses may have reflected diffic
in drafting an exempting clause. See Hearings,
committee of the Senate Committee on Labor and P
Welfare on S. 3295, 81st Cong., 2d Sess., pp. 173–174.
in 1958, the Senate voted down a proposal to enab
individual union member to recover any portion
dues not expended for "collective bargaining purp
104 Cong. Rec. 11330–11347.

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[30] See Proceedings of the AFL–CIO Constitutional Conv
Vol. II, pp. 183–192 (1959).

A recent leader of the London Times which reviewed the
report of the British Trade Unions Council noted that the do
concerned itself with "few . . . political subjects . . . whic
not their industrial sides." The London Times, Aug. 28,
p. 9, col. 2.

Congress is, of course, free to enact legislation along lines adopted in Great Britain, whereby dissenting members may contract out of any levies to be used for political purposes.[31] "At the point where the mutual advantage of association demands too much individual disadvantage, a compromise must be struck . . . . When that point has been reached—where the intersection should fall—is plainly a question within the special province of the legislature. . . . Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. . . . But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people." *American Federation of Labor* v.

[31] The course of legislation in Great Britain illustrates the various methods open to Congress for exempting union members from political levies. As a consequence of a restrictive interpretation of the Trade Union Act of 1876, 39 & 40 Vict., c. 22, by the House of Lords in *Amalgamated Society of Ry. Servants* v. *Osborne*, [1910] A. C. 87, Parliament in 1913 passed legislation which allowed a union member to exempt himself from political contributions by giving specific notice. Trade Union Act of 1913, 2 & 3 Geo. V, c. 30. The fear instilled by the general strike in 1926 caused the Conservative Parliament to amend the "contracting out" procedure by a "contracting in" scheme, the net effect of which was to require that each individual give notice of his consent to contribute before his dues could be used for political purposes. Trade Disputes and Trade Unions Act of 1927, 17 & 18 Geo. V, c. 22. When the Labor Party came to power, Parliament returned to the 1913 method. Trade Disputes and Trade Unions Act of 1946, 9 & 10 Geo. VI, c. 52. The Conservative Party, when it came back, retained the legislation of its opponents.

*American Sash & Door Co.*, 335 U. S. 538, 546, (concurring opinion).

In conclusion, then, we are asked by union mem who oppose these expenditures to protect their righ free speech—although they are as free to speak as ev against governmental action which has permitted a u elected by democratic process to bargain for a union and to expend the funds thereby collected for purp which are controlled by internal union choice. To would be to mutilate a scheme designed by Congres the purpose of equitably sharing the cost of securing benefits of union exertions; it would greatly embarra not frustrate conventional labor activities which become institutionalized through time. To do so give constitutional sanction to doctrinaire views an grant a miniscule claim constitutional recognition.

In *Everson* v. *Board of Education*, 330 U. S. 1, the l lative power of a State to subsidize bus service to paro schools was sustained, although the Court recogn that because of the subsidy some parents were unde edly enabled to send their children to church schools otherwise would not. It makes little difference whe the conclusion is phrased so that no establishment of gion was found, or whether it be more forthrightly st that the merely incidental "establishment" was too i nificant. Figures of the Department of Health, Educa and Welfare show that the yearly cost of transporta to non-public schools in Massachusetts totals app mately $659,749; in Illinois $1,807,740.[32] These scarcely what would be termed negligible expendit Some might consider the resulting "establishment" substantial than the loss of free speech through the

[32] Statistics of State School Systems, 1955–1956: Organiz Staff, Pupils, and Finances, c. 2, p. 70 (U. S. Department of H Education, and Welfare, 1959).

ment of $3 per month for union dues, whereby a dissident member feels identified in his own mind with the union's position.

The words of Mr. Justice Cardozo, used in a different context, are applicable here: "[C]ountless claims of right can be discovered to have their source or their operative limits in the provisions of a federal statute or in the Constitution itself with its circumambient restrictions upon legislative power. To set bounds to the pursuit, the courts have formulated the distinction between controversies that are basic and those that are collateral, between disputes that are necessary and those that are merely possible. We shall be lost in a maze if we put that compass by." *Gully* v. *First National Bank*, 299 U. S. 109, 118.

I would reverse and remand the case for dismissal in the Georgia courts.

# SUPREME COURT OF THE UNITED STA

No. 4.—October Term, 1960.

International Association of Machinists, et al., Appellants, v. S. B. Street, et al. } On Appeal From the preme Court of Geo

[June 19, 1961.]

Mr. Justice Whittaker, concurring in part dissenting in part.

Understanding the Court's opinion to hold—put in own words—that, in enacting § 2, Eleventh of the R way Labor Act, Congress intended to, and impli did, limit the use that railway labor unions may mak dues, fees and assessments, collected from those o members who were or are required to become or rem its members by force of union shop contracts negoti as permitted by that section, only to defray the cost negotiating and administering collective bargaining ag ments—including the adjustment and settlement of putes—and that the *Hanson* case, rightly constr upholds no more than that, I join Points I, II and II the Court's opinion.

But I dissent from Point IV of the Court's opin In respect to that point, it seems appropriate to make following observations. When many members pay same amount of monthly dues into the treasury of union which dispenses the fund for what are, under Court's opinion, both permitted and proscribed activi how can it be told whose dues paid for what? Le suppose a union with two members, each paying mon dues of three dollars, and that one does but the other not object to his dues being expended for "proscr

activity"—whatever that phrase may mean. Of the
for a given month, the union expends four dollars
admittedly proper activity and two dollars for "
scribed activity;" answering to the objector that the
dollars spent for "proscribed activity" were not from
but from the other's, dues. Would not the result be
the objector was thus required to pay not his one-half
three-fourths of the union's legitimate expenses? Or
not the objector nevertheless paid a ratable part of
cost of the "proscribed activity"?

The Court suggests that a proper decree might req
"restitution" to the objector of that part of his dues
is equal to the ratio of dues spent for "proscribed activ
to total dues collected by the union. But even if
Court could draw a clear line between what is and w
is not "proscribed activity," the accounting and p
problems involved would make the remedy most one
and impractical. But when there is added to this a
recognition of the practical impossibility of judici
drawing the clear line mentioned and also of the fact
the local unions which collect the dues promptly pa
part of them to the national union which, in turn,
engages in "proscribed activity," it becomes plain
the suggested restitution remedy is impossible of prac
performance.

It would seem to follow that the only practical rem
possible is the one formulated by the Georgia courts,
I would approve it.